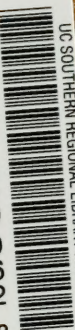


A
A
0
0
0
8
5
0
9
6
2
2

UC SOUTHERN REGIONAL LIBRARY FACILITY





SCHOOL OF LAW
UNIVERSITY OF CALIFORNIA
Los Angeles

GIFT OF
Roscoe Pound



Robert D. Smith

1000

POMEROY'S
EQUITY JURISPRUDENCE
AND
EQUITABLE REMEDIES
SIX VOLUMES.

POMEROY'S
EQUITY JURISPRUDENCE,
IN FOUR VOLUMES.

BY JOHN NORTON POMEROY, LL.D.

THIRD EDITION, ANNOTATED AND MUCH ENLARGED,

AND SUPPLEMENTED BY

A TREATISE ON EQUITABLE REMEDIES,

IN TWO VOLUMES.

BY JOHN NORTON POMEROY, JR.

SAN FRANCISCO:
BANCROFT-WHITNEY COMPANY,
LAW PUBLISHERS AND LAW BOOKSELLERS.
1905.

A TREATISE
ON
EQUITABLE REMEDIES;

SUPPLEMENTARY TO
POMEROY'S EQUITY JURISPRUDENCE.

**(INTERPLEADER; RECEIVERS; INJUNCTIONS; REFORMATION
AND CANCELLATION; PARTITION; QUIETING TITLE;
SPECIFIC PERFORMANCE; CREDITORS' SUITS;
SUBROGATION; ACCOUNTING; ETC.)**

BY
JOHN NORTON POMEROY, JR., A.M., LL.B.

IN TWO VOLUMES.

VOLUME TWO.

SAN FRANCISCO:
BANCROFT-WHITNEY COMPANY,
LAW PUBLISHERS AND LAW BOOKSELLERS.

1905.

6673639

T V.6.
P7714e
1905

Copyright, 1905,

BY

JOHN NORTON POMEROY, Jr.

SAN FRANCISCO:
THE FILMER BROTHERS ELECTROTYPE COMPANY,
TYPOGRAPHERS AND STEREOTYPERS.

TABLE OF CONTENTS.

CONTENTS OF VOLUME II.

CHAPTER XXV.

INJUNCTIONS TO PROTECT EASEMENTS.

ANALYSIS.

- § 543. Nature and extent of the equity jurisdiction.
- §§ 544-546. Grounds of the jurisdiction.
 - § 544. Irreparable injury.
 - § 545. Prevention of multiplicity of suits.
 - § 546. Other forms of inadequacy of legal remedy.
 - § 547. Illustrations.
 - § 548. The damage necessary to support an injunction.
 - § 549. Previous trial at law.
- §§ 550-551. Threatened disturbances.
 - § 550. Nature of the threat.
 - § 551. Nature of the injury threatened.
 - § 552. The balance of injury.
 - § 553. Plaintiff's right an absolute one.
- §§ 554-559. Relief given.
 - § 555. Form of injunction.
 - § 556. Temporary injunctions.
- §§ 557-558. Effect of change of conditions pending suit.
 - § 557. On permanent injunctions.
 - § 558. On temporary injunctions.
 - § 559. Complete relief.
 - § 560. Parties.

CHAPTER XXVI.

INJUNCTIONS FOR THE PROTECTION OF WATER RIGHTS.

ANALYSIS.

- § 561. Pollution.
- § 562. Diversion or obstruction.
- § 563. Percolating waters.
- § 564. Navigation.

CHAPTER XXVII.

INJUNCTIONS TO PROTECT PATENTS; COPYRIGHTS AND LITERARY PROPERTY; TRADE-MARKS AND TRADE-NAMES; EXCLUSIVE FRANCHISES.

ANALYSIS.

- §§ 565-573. Patents.
 - § 565. In general.
 - § 566. Requisites of bill.
 - § 567. Magnitude of injury is immaterial.
 - § 568. Incidental relief—Accounting—Damages.
 - § 569. Retention of bill after failure of right to injunctive relief.
 - § 570. Grounds for denial of relief.
 - § 571. Abandonment of infringement.
 - § 572. Laches.
 - § 573. Preliminary injunctions.
- §§ 574-576. Copyrights.
 - § 575. Same; preliminary injunctions.
 - § 576. Analogous rights; literary property.
- §§ 577-582. Trade-marks, etc.
 - § 578. Unfair competition.
 - § 579. Same—Continued.
 - § 580. Trade-names.
 - § 581. Corporate names.
 - § 582. Application of "clean hands" maxim.
- §§ 583-584. Exclusive franchises.
 - § 584. Same—Continued.

CHAPTER XXVIII.

INJUNCTION AGAINST INTERFERENCE WITH FREEDOM OF TRADE OR EMPLOYMENT; COM- BINATIONS, STRIKES, BOYCOTTS, ETC.

ANALYSIS.

- § 585. I. When such injunction is granted.
- § 586. II. A question of newly defined rights.
- §§ 587-610. III. How these rights may be invaded by the combina-
tion.
- § 588. Analysis of the rights.
- §§ 589-592. (1) Procuring or inducing a breach of contract as a
legal wrong.
- § 590. (a) By acting upon the employee.
- § 591. (b) By acting upon the customer or dealer.
- § 592. (c) By interference with the performance of business.
- §§ 593-599. (2) Interference where no contract relation exists.
- § 594. (a) Right to continuance free from interference.
- § 595. (b) Justifiable interference—Persuasion.
- §§ 596-597. (c) Procuring discharge or withdrawal of workmen, or
loss of customers.
- § 597. (c1) Does motive affect liability?
- § 598. (d) Right to have labor or trade flow freely—The right
of probable expectancy.
- § 599. (e) Right to have personal freedom protected.
- §§ 600-610. (3) Injunction because of the means employed—In-
timidation.
- § 601. (a) The strike.
- § 602. (b) The threat to strike.
- § 603. (c) Intimidating threats.
- § 604. (d) Picketing.
- § 605. (e) Moral intimidation.
- §§ 606-610. (f) The boycott.
- § 607. (f1) The boycott of persuasion.
- § 608. (f2) The boycott of fear.
- § 609. (f3) The boycott as a weapon of competition.
- § 610. (f4) The blacklist.
- §§ 611-617. IV. Grounds for the injunction.
- § 612. (1) Destruction of complainant's business or vocation.
- § 613. (2) Multiplicity of suits.
- § 614. (3) Continuing injury.

- § 615. (4) Nuisance.
- § 616. (5) Interference, by intimidation, with legal right.
- § 617. (6) The combination may be enjoined as a conspiracy.
- § 618. V. Mandatory injunction.
- § 619. VI. Where act enjoined is a crime.
- § 620. VII. Against whom does injunction run.
- § 621. VIII. Preliminary injunction against a combination.
- § 622. IX. Combinations in restraint of interstate commerce.
- §§ 623-628. X. Combinations of capital—Boycotting combinations.
- § 624. (1) The boycott is the unlawful element.
- § 625. (2) Mere loss of business not ground for the injunction.
- § 626. (3) Where the combination is a monopoly.
- § 627. (4) A combination of capital in restraint of interstate commerce is enjoined.
- § 628. (5) Injunctions against combinations in violation of State Trade and Commerce Statutes.

CHAPTER XXIX.

INJUNCTION: MISCELLANEOUS TORTS.

ANALYSIS.

- §§ 629-631. Libels; slander of title.
- § 629. No injunction of a libel as such, except by statute.
- § 630. Same; libel may be enjoined on other equitable grounds.
- § 631. Same; the rule in England.
- § 632. The "right of privacy."
- § 633. Injunctions to enforce the obligations of common carriers and public service corporations.
- § 634. Injunctions against certain frauds on contractual rights — "Ticket-scalpers"—Dealers in "trading stamps."
- § 635. Injunctions for the protection of electric currents.

CHAPTER XXX.

MANDATORY INJUNCTIONS.

ANALYSIS.

- § 636. Mandatory injunctions.

CHAPTER XXXI.

EQUITABLE RELIEF AGAINST ACTIONS, JUDGMENTS AND EXECUTIONS AT LAW.

ANALYSIS.

- § 637. Origin of the jurisdiction.
- §§ 638-644. When the jurisdiction is not exercised.
 - § 638. General doctrine.
 - § 639. Same—Inexcusable neglect.
 - § 640. Jurisdiction of federal courts to enjoin proceedings in state courts.
 - § 641. State courts cannot enjoin proceedings of federal courts.
 - § 642. Relief from equitable proceedings and decrees.
 - § 643. Probate decrees.
 - § 644. No injunction against criminal proceedings.
 - § 645. When the jurisdiction may be exercised—First class—Equitable rights.
 - § 646. Same—Second class.
- §§ 647-669. Same—Third class.
 - § 648. Rationale of the doctrine.
 - § 649. Fraud as a ground for relief.
 - § 650. Violation of stipulation or agreement.
 - § 651. Miscellaneous instances of unconscionable conduct.
 - § 652. Same—Continued.
 - § 653. Fraud subsequent to trial.
 - § 654. Fraudulent concealment.
- §§ 655-656. Instances of refusal of relief.
 - § 656. Perjury.
- §§ 657-662. Accident, mistake and surprise.
 - § 657. In general.
 - § 658. Accident.
- §§ 659-661. Mistake.
 - § 660. Same—Mistake of officers of court.
 - § 661. Same—Newly discovered evidence.
 - § 662. Surprise.
- §§ 663-666. Want of jurisdiction—Failure to serve summons or process.
 - § 664. Same—Continued.
 - § 665. Same—Unauthorized appearance of attorney.
 - § 666. Same—Miscellaneous.
- § 667. Meritorious defense must be shown.

- § 668. Jurisdiction to grant new trials at law.
- § 669. Effect of statutory remedies.
- § 670. Injunctions against proceedings in foreign jurisdictions.
- §§ 671-674. Injunctions against executions.
- § 672. Same—Real property.
- § 673. Same—Property of third persons.
- § 674. Same—Not for mere irregularities.

CHAPTER XXXII.

REFORMATION AND CANCELLATION.

ANALYSIS.

- §§ 675-683. Reformation.
- § 675. Reformation for mutual mistake.
- § 676. Unilateral mistake—Fraud.
- § 677. Illustrations—Mistake of law.
- § 678. Illustrations—Continued.
- § 679. No reformation in favor of a volunteer.
- § 680. Negligence—Laches—Limitations.
- § 681. Parties against whom reformation may be had.
- § 682. Parol proof—Amount of proof.
- § 683. Decree.
- §§ 684-688. Cancellation.
- § 684. Scope of the remedy.
- § 685. Adequate remedy by defense or action at law.
- § 686. Equitable relief where consideration of conveyance has failed—Rescission of "support deeds."
- § 687. Ratification—Laches.
- § 688. Restoration of consideration.

CHAPTER XXXIII.

ASSIGNMENT OF DOWER; AND ESTABLISHMENT OF DISPUTED BOUNDARIES.

ANALYSIS.

- §§ 689-693. Assignment of dower.
- § 689. Legal remedies.
- § 690. Origin and grounds of the equitable jurisdiction.

- § 691. The jurisdiction now concurrent.
- § 692. Advantages of the equitable procedure.
- § 693. Exclusive jurisdiction over dower in equitable estates.
- §§ 694-700. Establishment of disputed boundaries.
- § 694. In general.
- § 695. Grounds for relief—Fraud.
- § 696. Same—Multiplicity of suits.
- § 697. Same—Relationship between parties.
- § 698. Same—Miscellaneous.
- § 699. Requisites of bill.
- § 700. Nature of relief.

CHAPTER XXXIV.

PARTITION.

ANALYSIS.

- § 701. Partition—In general.
- § 702. Common-law remedy.
- § 703. Equitable jurisdiction.
- § 704. Property subject to partition—In general.
- § 705. Personal property.
- § 706. Future estates.
- § 707. Incorporeal and other property.
- § 708. Limitations on the right to partition.
- § 709. Who is entitled to partition.
- § 710. Effect of disseisin.
- § 711. Disseisin—Rule in equity.
- § 712. Disputed title.
- § 713. Parties defendant.
- § 714. Persons under disability.
- § 715. Holders of particular estates and interests.
- § 716. Estates of persons not in being.
- § 717. Incidental relief in equity—In general.
- § 718. Owelty of partition.
- § 719. Improvements.
- § 720. Accounting.
- § 721. Mode of partition.
- § 722. Partition by means of sale.

CHAPTER XXXV.

BILLS OF PEACE.

ANALYSIS.

- § 723. Bills of peace—Bills *quia timet*—Quieting title.

CHAPTER XXXVI.

SUIT TO PREVENT OR REMOVE CLOUD ON TITLE— STATUTORY SUIT TO QUIET TITLE.

ANALYSIS.

- §§ 724–734. Cloud on title.
- § 724. Definition.
 - § 725. Distinction between bill to quiet title and bill to remove cloud.
 - § 726. Prevention of threatened cloud.
 - § 727. Instrument constituting cloud.
 - § 728. Adequacy of remedy at law.
 - § 729. Does the jurisdiction extend to personal property?
 - § 730. Plaintiff's title.
 - § 731. Possession of plaintiff.
 - § 732. Sufficiency of possession.
 - § 733. Instrument invalid on its face; no relief.
 - § 734. Same; limitations on, and denial of this doctrine.
- §§ 735–743. Statutory suit to quiet title.
- § 735. In general.
 - § 736. Remedy, whether equitable or legal.
 - § 737. Possession of plaintiff.
 - § 738. Title of plaintiff.
 - § 739. Nature of the adverse claim.
 - § 740. Service of process by publication.
 - § 741. Pleading on the part of plaintiff.
 - § 742. Defendant's pleadings.
 - § 743. Judgment or decree.

CHAPTER XXXVII.

SPECIFIC PERFORMANCE OF CONTRACTS—GROUND
AND EXTENT OF THE JURISDICTION.

ANALYSIS.

- § 744. Ground of the jurisdiction.
- §§ 745-761. Extent of the jurisdiction.
- §§ 745-754. Inadequacy of damages.
 - § 745. Contracts concerning lands.
 - § 746. Contract to make a will of lands.
 - § 747. Specific performance in favor of vendor.
 - § 748. Contracts concerning chattels—Delivery up of unique, etc., chattels.
 - § 749. Same; other grounds for relief.
 - § 750. Things in action.
 - § 751. Patents.
 - § 752. Shares of stock.
 - § 753. Miscellaneous agreements.
 - § 754. Awards.
 - § 755. No relief when decree would be nugatory—Partnership agreements.
 - § 756. No relief when performance depends on consent of a third person.
- §§ 757-761. Specific performance refused when court cannot render or enforce a decree.
 - § 758. Arbitration agreements, etc.
 - § 759. Contracts for personal services.
 - § 760. Contracts for building or construction.
 - § 761. Other contracts requiring continuous acts—Railroad operating agreements.

CHAPTER XXXVIII.

ELEMENTS AND INCIDENTS OF THE CONTRACT ES-
SENTIAL TO SPECIFIC PERFORMANCE.

ANALYSIS.

- § 762. The jurisdiction discretionary.
- § 763. Contract must be upon a valuable consideration.

- §§ 764-768. Contract must be complete, certain, and definite.
 - § 765. Incompleteness of proof.
 - § 766. How far parol evidence can be used to make certain or definite.
 - § 767. Incompleteness and uncertainty may relate to the parties, price, subject-matter, conditions, etc.
 - § 768. Uncertainty and indefiniteness alone as a defense.
- §§ 769-776. The doctrine of mutuality.
 - § 769. The rule restated.
 - § 770. Contracts whose terms are not mutual; (a) Where plaintiff could avoid performance.
 - § 771. (b) Where plaintiff's non-enforceable promise has been performed.
 - § 772. (c) Where plaintiff's inability is cured before decree.
 - § 773. Unilateral contracts—Options.
 - § 774. Contracts terminable at the will of one party.
 - § 775. Indirect enforcement by enjoining the breach of defendant's negative covenant.
 - § 776. Fraud or other personal bar of the defendant.
- §§ 777-783. Mistake as a defense to specific performance.
 - § 777. Rescission and reformation.
 - § 778. What mistakes are a defense to specific performance.
 - § 779. Misdescription and ambiguity.
 - § 780. Mistake induced, or contributed to, by the plaintiff.
 - § 781. Mistake known to plaintiff.
 - § 782. Mistake due to defendant's negligence.
 - § 783. Mistake due solely to defendant.
 - § 784. Concealment or non-disclosure of material facts as a defense.
- §§ 785-800. Unfairness and hardship as a defense.
 - § 786. Unfairness and advantage.
 - § 787. Inequality—(a) In making the contract—(b) In the operation of the contract.
 - § 788. Intoxication.
 - § 789. Improvidence of the undertaking.
 - § 790. Inadequacy of consideration with other grounds.
 - § 791. Unintended harsh consequence.
 - § 792. Inadvertent covenant or act.
 - § 793. Greatly oppressive consequence.
 - § 794. Injury to third persons.
 - § 795. Inconvenience to the public.
 - § 796. Performance no benefit to plaintiff.
 - § 797. Subsequent events which should have been contemplated, no defense.
 - § 798. Subsequent events, not in possible contemplation, often a defense.

- § 799. Direct act of either party.
- § 800. Forfeiture.
- §§ 801-804. A purchaser need not accept a doubtful or unmarketable title.
- § 802. The standard for determining a "doubtful" title.
- § 803. Where the doubt arises from an unsettled question of law.
- § 804. Where the doubt arises from an extrinsic fact or the construction of a document.

CHAPTER XXXIX.

SPECIFIC PERFORMANCE: DEFAULT AND DELAY BY PLAINTIFF.

ANALYSIS.

- § 805. Plaintiff's performance, or offer to perform, a condition of relief.
- § 806. Failure to perform conditions precedent.
- § 807. Default in option to purchase—No relief.
- § 808. Vendor as plaintiff; at what time must he furnish a good title.
- § 809. Tender before suit, when necessary.
- §§ 810-816. Time as affecting the right to a specific performance.
- § 810. Generally not essential.
- § 811. When time is of the essence.
- § 812. Time material.
- § 813. Time not essential when waiver by defendant.
- § 814. What degree of laches will defeat relief.
- § 815. Right after default to name reasonable time for performance.
- § 816. Effect of forfeiture clause in the contract.

CHAPTER XL.

SPECIFIC PERFORMANCE OF PAROL CONTRACTS, PART PERFORMED.

ANALYSIS.

- § 817. Rationale of the doctrine.
- § 818. Doctrine does not apply at law.
- § 819. Possession, alone, sufficient.

- § 820. What possession not sufficient.
- § 821. Possession coupled with payment or improvements.
- § 822. Suit by vendor.
- § 823. Modifications and rejection of the doctrine.
- § 824. Payment not sufficient.
- § 825. Conveyance by plaintiff not sufficient.
- § 826. Whether personal services are a sufficient act of part performance.
- § 827. Miscellaneous acts of part performance.
- § 828. Oral promise to give.
- § 829. Marriage not part performance.
- § 830. Specific performance because of fraud, independent of the doctrine of part performance.

CHAPTER XLI.

PARTIAL PERFORMANCE WITH COMPENSATION— DAMAGES IN PLACE OF A SPECIFIC PERFORMANCE.

ANALYSIS.

- §§ 831-836. Partial performance with compensation.
 - § 832. The deficiency may be in quantity or quality of, or interest in, the estate, or a defect in title.
 - § 833. Vendee's option of specific performance with compensation, or rescission.
 - § 834. Limitations on vendee's right: Dower right of vendor's wife.
 - § 835. Indemnity instead of compensation, occasionally given.
 - § 836. Where no basis for estimating compensation.
 - § 837. Damages in equity in place of a specific performance.

CHAPTER XLII.

EQUITABLE ESTATES AND INTERESTS UNDER THE CONTRACT OF SALE AND PURCHASE OF LAND.

ANALYSIS.

- § 838. The equitable conversion.
- §§ 839-846. Rights of inheritance from parties to the contract.

- § 839. General principle.
- § 840. Heir or devisee of vendee.
- § 841. Vendor's representatives.
- § 842. Rights of inheritance where the contract is never performed.
- § 843. Same—When the equitable conversion is not made.
- § 844. On death of vendor in possession, the rents go to heir.
- § 845. Effect of unperformed conditions.
- § 846. Option to purchase, exercised after death of vendor.
- § 847. Devise of lands contracted for.
- § 848. Contract to sell revokes will *pro tanto*.
- § 849. Dower interests under the contract.
- §§ 850-856. Assignees and subsequent purchasers.
- § 850. Rights of the assignee of the vendee.
- § 851. Assignee of the vendee not subject to specific performance.
- § 852. Grantee of vendor is subject to specific performance.
- § 853. The equitable grounds for the rights against the grantee of the vendor and in favor of the assignee of the vendee.
- § 854. Assignment of the purchase-money notes transfers the security.
- § 855. Vendor's assignee in bankruptcy subject to specific performance.
- § 856. Vendee's assignee in bankruptcy not subject to specific performance.
- § 857. Waste by vendee; by vendor.
- § 858. Vendor may be liable as trustee, for deterioration.
- § 859. Loss by fire or other accident; usually falls on vendee.
- § 860. Vendee generally entitled to insurance money.
- § 861. Loss by occurrence of contingency on the vendee.
- § 862. Foreclosure of vendee's equity of specific performance.
- § 863. Sale of the property in lieu of strict foreclosure.

CHAPTER XLIII.

SUITS TO COMPEL TRANSFER OR ISSUE OF STOCK.

ANALYSIS.

- § 864. Suits against corporations to compel the transfer or issue of stock.

CHAPTER XLIV.

MARSHALING OF SECURITIES.

ANALYSIS.

- § 865. In general.
- § 866. Paramount encumbrancer must not be inconvenienced.
- § 867. Rights of third parties must not be prejudiced.
- § 868. Rule applicable only between creditors of one debtor.
- § 869. Homesteads.
- § 870. Relief given.

CHAPTER XLV.

CREDITORS' SUITS.

ANALYSIS.

- § 871. In general.
- §§ 872-874. Adequacy of legal remedy.
 - § 872. In general—Supplementary proceedings.
 - § 873. In case of fraudulent conveyance, other remedies are inadequate.
 - § 874. But complainant must show the necessity of setting aside the fraudulent conveyance.
- § 875. Discovery of assets.
- §§ 876-881. What property may be reached.
 - § 876. Intangible property.
 - § 877. Choses in action.
 - § 878. Contingent interests.
 - § 879. Equitable interests.
 - § 880. Fraudulent transfers or personalty may be set aside.
 - § 881. Property which cannot be reached by the suit.
- §§ 882-888. How far the legal remedies must be first pursued.
 - § 882. Necessity for judgment at law—Statutes changing the rule.
 - § 883. What judgment is sufficient.
 - § 884. When judgment may be dispensed with.
 - § 885. Is an attachment lien sufficient to support a creditor's bill?

- § 886. Steps beyond judgment—In suits to reach assets not subject to execution.
- § 887. Same—In suits to remove fraudulent obstructions.
- § 888. What is a sufficient return of execution.
- § 889. Limitations and laches.
- § 890. Who may bring suit.
- § 891. Parties defendant.
- § 892. Joinder of parties plaintiff; one creditor suing in behalf of others.
- § 893. Creditor suing for himself obtains priority.
- § 894. Except in certain suits, where a trust or *quasi-trust* exists for all creditors.
- § 895. When the lien of the creditor's bill accrues.

CHAPTER XLVI.

CREDITORS' BILLS AGAINST STOCKHOLDERS.

ANALYSIS.

- § 896. The "trust-fund" theory.
- § 897. Objections to the theory.
- § 898. The fraud or misrepresentation theory.
- § 899. Suggested modification of the fraud theory.
- § 900. A theory of liability based on analogy to partnership.
- § 901. Public policy theory.
- § 902. Six distinct classes of creditors' bills against stockholders.
- § 903. First class—Money subscription; no call required.
- § 904. Second class—Money subscription; call necessary.
- § 905. Third class—Money subscription; underpaid stock issued as fully paid.
- § 906. Fourth class—Subscription paid in over-valued property.
- § 907. Fifth class—Conveyance of corporate assets in fraud of creditors.
- § 908. Sixth class—Corporation dissolved, directors liquidating as statutory trustees.
- § 909. Questions of pleading and practice in connection with such bills.
- § 910. Statutory liability of stockholders in equity.

CHAPTER XLVII.

SUITS FOR REIMBURSEMENT, CONTRIBUTION, EXONERATION, AND SUBROGATION.

ANALYSIS.

- § 911. In general.
- §§ 912-914. Reimbursement.
 - § 912. Parties entitled thereto.
 - § 913. Conditions of recovery.
 - § 914. Amount of recovery—Incidents of right.
- §§ 915-918. Contribution.
 - § 915. Statement of doctrine—Jurisdiction in equity.
 - § 916. Parties entitled to contribution.
 - § 917. Conditions under which equitable action is maintainable.
 - § 918. Amount of recovery—Incidents of the right.
 - § 919. Exoneration.
- §§ 920-925. Subrogation.
 - § 921. Parties entitled to subrogation.
 - § 922. Nature of the right, purely equitable.
 - § 923. Conditions upon which subrogation is allowed—Payment—Other security.
 - § 924. Rights upon which subrogation operates.
 - § 925. Subrogation of creditor or co-surety to securities given to indemnify a surety.

CHAPTER XLVIII.

SUITS FOR AN ACCOUNTING.

ANALYSIS.

- § 926. Origin of the equitable jurisdiction.
- § 927. Jurisdiction, when exercised—Inadequacy of legal remedies.
- § 928. Plea of stated account a bar.
- § 929. Mutual accounts.
- § 930. Complicated accounts.
- § 931. Fiduciary relations.
- § 932. Same; principal and agent.
- § 933. Same; profit sharers, part owners, tenants in common and joint tenants.
- § 934. When a discovery is necessary.
- § 935. Accounting as incidental to other relief.

CHAPTER XLIX.

PARTNERSHIP BILLS.

ANALYSIS.

- § 936. In general—Suits for dissolution.
- § 937. Suits for accounting—Legal remedy.
- § 938. Same—Dissolution necessary.
- § 939. Exceptions—Accounting without dissolution.
- § 940. Who may bring suit.
- § 941. Grounds for refusal of relief.
- § 942. Statute of limitations—Laches.
- § 943. Disposition of partnership property upon dissolution.
- § 944. Rights of creditors in partnership property.
- § 945. Rights of creditors in separate property.

A TREATISE
ON
EQUITABLE REMEDIES.

EQUITABLE REMEDIES.

CHAPTER XXV.

INJUNCTIONS TO PROTECT EASEMENTS.

ANALYSIS.

- § 543. Nature and extent of the equity jurisdiction.
- §§ 544-546. Grounds of the jurisdiction.
 - § 544. Irreparable injury.
 - § 545. Prevention of multiplicity of suits.
 - § 546. Other forms of inadequacy of legal remedy.
 - § 547. Illustrations.
 - § 548. The damage necessary to support an injunction.
 - § 549. Previous trial at law.
- §§ 550-551. Threatened disturbances.
 - § 550. Nature of the threat.
 - § 551. Nature of the injury threatened.
 - § 552. The balance of injury.
 - § 553. Plaintiff's right an absolute one.
- §§ 554-559. Relief given.
 - § 555. Form of injunction.
 - § 556. Temporary injunctions.
- §§ 557-558. Effect of change of conditions pending suit.
 - § 557. On permanent injunctions.
 - § 558. On temporary injunctions.
 - § 559. Complete relief.
 - § 560. Parties.

§ 543. Nature and Extent of the Equity Jurisdiction.—
The jurisdiction of equity over easements, as in trespass and nuisance, is for the protection of legal rights for the infringement of which legal remedies are inadequate. In the earlier cases, at least, it was thought that this

limitation made the right to equitable relief markedly less extensive than the right to an action at law. In a leading case¹ Lord Eldon, in a suit to enjoin obscuring ancient lights, said: "The foundation of this jurisdiction, interfering by injunction, is that head of mischief, alluded to by Lord Hardwicke, that sort of material injury to the comfort of those who dwell in the neighboring house, requiring the application of a power to prevent, as well as remedy, an evil for which damages, more or less, would be given in an action at law. . . . An action on the case . . . might be maintained in many cases which would not support an injunction." In contrast to this cautious statement of the jurisdiction it was recently said by an American court: "Injunction is uniformly held to be a proper remedy to protect against an interference with the enjoyment of an easement."² Of the two statements, the latter more nearly represents the present state of the law; so far is this true, indeed, that the tendency of the courts is to take jurisdiction to enjoin disturbance of easements as a matter of course, without discussion of the grounds of the jurisdiction. The explanation of the change doubtless is that, when once the jurisdiction of equity was established, it was found that most cases could be shown to be incapable of adequate legal remedy, and hence came into equity.³

¹ Attorney-General v. Nichol, 16 Ves. 338.

² Per Oldham, C., in *Keplinger v. Woolsey* (Neb.), 93 N. W. 1008.

³ In *Leech v. Schweder*, L. R. 9 Ch. App. 463, 476, Mellish, L. J., said: "Practically, in my opinion, there is no difference with respect to light in the amount of damage which would entitle a person to maintain an action at law and that which would entitle him to a bill in equity. The circumstance that all cases of light and air are brought to this court, seems tolerably good evidence that the world at large does not consider that a plaintiff has practically a better chance of succeeding if he has the right to light tried before a judge and jury than if he carries it to this court. I am most unwilling to make a differ-

§ 544. Grounds of the Jurisdiction—Irreparable Injury.—

The particular forms in which this inadequacy of the legal remedy manifests itself are substantially the same as in other torts which equity will enjoin. Chief among them, as shown in the decided cases, is that of irreparable injury, which, here as elsewhere, means a destructive act to property of such peculiar character or use that its loss would not be adequately recompensed by the damages a jury's verdict would give.⁴ From the nature of easements their disturbance, if other than temporary, is necessarily destructive; and because the easement is always connected with the use

ence between law and equity when I do not find it to exist." See, also, *Colls v. Home etc. Stores*, [1904] App. Cas. 179, 193, 212, reversing [1902] 1 Ch. D. 302.

⁴ See chapter on Trespass, *ante*, § 495. It should be noted that this is not saying the injury is beyond any money value. The following language of Wood, V. C., in *Dent v. Auction Mart Co.*, L. R. 2 Eq. 238, 246, 247, clearly illustrates this point: "It appears to me it cannot safely be held that this court will allow parties so to exercise rights which they may have in their soil as to inflict an injury on their neighbor, if the neighbor is unwilling to take any compensation; or even though he be willing to take compensation, if he is not ready to submit to valuation of a jury, but insists on his own right to determine what the value of his property is. One of the points which was put in argument illustrates this view. It was said there had been negotiations, and Messrs. Dent were willing at one time to have taken £2,000 for their right to oppose the erection of these buildings. After that, it was said to be impossible to regard this as a case of irreparable injury, and that therefore the only ground on which a court of equity interposes in cases of trespass failed. If a man says he will take £2,000, that affords some measure of the amount of the injury. The argument, therefore, would result in this—that because a man says he considers the amount of inconvenience and annoyance is so great as not to be estimated by the amount of money damages which a jury would fix, but that he is willing, as persons sometimes are, to sell his comfort and ease for a high pecuniary reward, therefore he is to be compelled to go to a jury who might award him some £100 or £150. His comfort is to be taken away, not at his own estimate, but at the value which a jury might put on it. . . . It appears to me that is a mistaken view of the jurisdiction of the court."

of real property, it is generally *per se* possessed of the peculiar quality which is not adequately to be paid for in damages. Thus, in granting an injunction against the filling up of part of a reservoir, and thereby interfering with the plaintiff's easement in it, the court said: "The plaintiffs have no adequate remedy at law. In so far as the preservation of the reservoir for holding water is beneficial to the running of their mill, the plaintiffs have the right to maintain the same according to the agreements, stipulations, conditions, and covenants mentioned. The injury complained of goes to the impairment of the use of the property belonging to the plaintiff."⁵ And the same idea is expressed in this sentence from another case in which the obstruction of a right of way was enjoined: "No action of damages can give adequate redress to a party who is hemmed in so as to have no passage of egress from his own farm."⁶ The free exercise of the right to an easement is generally essential to the enjoyment or beneficial use of land with which it is connected; hence, in most of the cases in which the question of jurisdiction is discussed at all, the ground of equitable interference is said to be the prevention of irreparable injury.⁷

⁵ Per Cassoday, C. J., in *Koenig v. City of Watertown*, 104 Wis. 409, 80 N. W. 728.

⁶ Per Campbell, J., in *Nye v. Clark*, 55 Mich. 599, 22 N. W. 57.

⁷ *Jordeson v. Sutton etc. Co.*, 68 L. J. Ch. 457, [1899] 2 Ch. 217, 80 L. T., N. S., 815, 63 J. P. 692; *Cunningham v. Rome R. R. Co.*, 27 Ga. 499; *Murphey v. Harker*, 115 Ga. 77, 41 S. E. 585; *Riverdale Park Co. v. Westcott*, 74 Md. 311, 28 Am. St. Rep. 249, 22 Atl. 270; *Haight v. Littlefield*, 71 Hun, 285, 24 N. Y. Supp. 1097; *Smith v. Smith*, L. R. 20 Eq. 500; *Sanderlin v. Baxter*, 76 Va. 299, 44 Am. Rep. 165; *White v. Flannagan*, 1 Md. 525, 54 Am. Dec. 668; *Jay v. Michael*, 92 Md. 198, 48 Atl. 61; *First Nat. Bank etc. v. Tyson*, 133 Ala. 439, 91 Am. St. Rep. 46, 33 South. 144; *Beatty v. Kurtz*, 2 Pet. 566, 7 L. ed. 566.

§ 545. **Prevention of Multiplicity of Suits.**—A second ground of jurisdiction to enjoin disturbance of easements is the prevention of multiplicity of suits. This ground of jurisdiction, while entirely different in character from that of irreparable injury, is very apt to be present with it in the facts of most cases. It is the element of continuance or permanence that causes repeated and harassing litigation, to prevent which is the purpose of equity in enjoining because of multiplicity of suits. In many cases, irreparable injury, too, is present only because the infringement is permanent or, at least, of considerable duration, when a merely temporary infringement would not be irreparable because it would not amount to a destructive act; such are cases of obstruction of ancient lights or of a right of way. Hence the ground of jurisdiction is sometimes so expressed that it is not clear which of the two is meant,⁸ and it is doubtless generally true that the jurisdiction can be rested on either or both of them. Occasionally, however, the court makes a clear distinction between them. Thus in *Hacke's Appeal*⁹ the court said: "It is not necessary that the plaintiff should prove damage in order to entitle him to his property. . . . The obstruction of a way by the owner of the land, differs widely from the maintenance of a mill or factory which is in itself lawful, but by its noise, fumes or odors, becomes a private nuisance to a person in the vicinity.

⁸ See *Kittle v. Pfeiffer*, 22 Cal. 485; *Riverdale Park Co. v. Westcott*, 74 Md. 311, 28 Am. St. Rep. 249, 22 Atl. 270. In *Riverdale Park Co. v. Westcott*, *supra*, the court, in enjoining the destruction of a dam in which the plaintiff had an easement, said: "The dam was absolutely necessary to supply the water to operate the mill and its destruction meant the destruction of the beneficial enjoyment of the mill itself. An action at law would not, under such circumstances, afford an adequate remedy. If the dam was rebuilt the appellant might again destroy it and there would be no end to this litigation."

⁹ 101 Pa. St. 245.

In the latter case the question of irreparable damage enters, and often a court of equity will not interfere: *Richard's Appeal*, 57 Pa. St. 105, 98 Am. Dec. 202. The doctrine of that case applies to many other kinds of business; but not where a man buys land subject to an easement, or grants an easement. He cannot appropriate such property against an owner's will and say, 'I will compensate him in damages.' A judgment for damages does not transfer the plaintiff's property in the way to the defendant, as would a judgment in trover or trespass for taking goods. Nor will the law restore the enjoyment to the owner. He may have repeated actions for damages, and neither gain enjoyment nor lose his right thereto. The law does not offer an adequate remedy. He is entitled to a remedy that will restore him to enjoyment, and is not confined to actions at law for damages resulting from obstructions." And other cases in which the courts' notion of the inadequacy of the legal remedy in the particular situations before them was that it could only give damages from time to time in repeated actions, thus causing a needless and harmful multiplicity of suits, are not uncommon.¹⁰ It is this class of cases that marks the great advance of modern law over that stated in the *dictum* of Lord Eldon above quoted.

§ 546. Other Forms of Inadequacy of Legal Remedy.—Almost all the cases of injunctions against infringement of easements in which the question of jurisdiction

¹⁰ *Nininger v. Norwood*, 72 Ala. 277, 47 Am. Rep. 412; *Spokane Mill Co. v. Post*, 50 Fed. 429; *White v. Tide Water Oil Co.*, 50 N. J. Eq. 1, 25 Atl. 199; *Oswald v. Wolf*, 129 Ill. 200, 21 N. E. 839; *Townsend v. Epstein*, 93 Md. 537, 86 Am. St. Rep. 441, 49 Atl. 629, 52 L. R. A. 409; *Olivella v. New York etc. Co.*, 31 Misc. Rep. 203, 64 N. Y. Supp. 1086, affirmed in 64 N. Y. Supp. 1145; *Cadigan v. Brown*, 120 Mass. 493; *Carpenter v. Capital Elect. Co.*, 178 Ill. 29, 69 Am. St. Rep. 286, 52 N. E. 973, 43 L. R. A. 645.

is noticed are put upon one of the two grounds already discussed. But no more than in cases of trespass or nuisance do these two forms necessarily exhaust the possibilities of form in which inadequacy of the legal remedy may manifest itself; and this, in whatever form, is always the fundamental test of the jurisdiction. That the cases on easements are so largely in the two classes is, perhaps, partly because they are comparatively few in number, partly because the states of facts are of narrow range and very similar in characteristics. But even here illustrations of an inadequacy of the legal remedy for other reasons than those already mentioned are to be found.¹¹ Thus, in a very recent case¹² the court said: "Where the facts are of such a nature as to render the measure of damages speculative and impossible to ascertain with any degree of certainty, equitable relief is seldom denied." This means that when the verdict of a jury necessarily would be in the nature of conjecture as to the amount of damages, a sufficient ground of jurisdiction is shown. And an injunction will be granted also to prevent the taking of an easement for public purposes without first making compensation.¹³

¹¹ In *Thurston v. Minke*, 32 Md. 487, the court in enjoining an obstruction of an easement of light by a lessee of the plaintiff, rested the jurisdiction on the privity between the parties, by analogy to cases of waste. This was done to distinguish the case from *Amelung v. Seekamp*, 9 Gill & J. 468, in which the court erroneously held that only those disturbances of easements causing irreparable injury would be enjoined. The reason of the court would probably not be followed now, as a plainer ground of jurisdiction, viz., the prevention of multiplicity of suits arising out of a continuing tort, is very generally recognized.

¹² *Keplinger v. Woolsey* (Neb.), 93 N. W. 1008. See, also, *Newell v. Sass*, 142 Ill. 104, 31 N. E. 176; *Thorpe v. Brumfit*, L. R. 8 Ch. 650.

¹³ *McQuigg v. Cullins*, 56 Ohio St. 649, 47 N. E. 595; *Lowery v. City of Pekin*, 186 Ill. 387, 57 N. E. 1062, 51 L. R. A. 301; *Ackerman*

§ 547. Illustrations.—Interference with rights of way are among the most common disturbances of easements enjoined in equity; and this interference may be, as it usually is, by obstruction, total or partial,¹⁴ or by other means which render the use of the way less beneficial than it should be.¹⁵ Another large class of cases is that in which injunctions are granted against obstructions of easements of light and air, often in England, ancient lights,¹⁶ in this country, easements cre-

v. True, 56 App. Div. 54, 66 N. Y. Supp. 6. See, also, Wheeler v. Bedford, 54 Conn. 244, 7 Atl. 22.

¹⁴ Spokane etc. Mill v. Post, 50 Fed. 429; Kittle v. Pfeiffer, 22 Cal. 485; Cunningham v. Rome etc. Co., 27 Ga. 499; Murphey v. Harker, 115 Ga. 77, 41 S. E. 585; Yeager v. Manning, 183 Ill. 275, 55 N. E. 691; Chicago etc. Co. v. Porter, 72 Iowa, 426, 34 N. W. 286; Henry v. City of Louisville, 19 Ky. Law Rep. 790, 42 S. W. 94; Calvert v. Weddle, 19 Ky. Law Rep. 1883, 44 S. W. 648; Kamer v. Bryant, 103 Ky. 723, 46 S. W. 14; White v. Flannigan, 1 Md. 525, 54 Am. Dec. 668; Jay v. Michael, 92 Md. 198, 48 Atl. 61; Lathrop v. Elsner, 93 Mich. 599, 53 N. W. 791; Keplinger v. Woolsey (Neb.), 93 N. W. 1008; White v. Tide Water Oil Co., 50 N. J. Eq. 1, 25 Atl. 199; Hacke's Appeal, 101 Pa. St. 245; Burke v. Wall, 29 La. Ann. 38, 29 Am. Rep. 316; Tucker v. Howard, 128 Mass. 361; Smith v. Young, 160 Ill. 163, 43 N. E. 486; O'Reagan v. Duggan, 117 Iowa, 612, 91 N. W. 909; Bubenzer v. Philadelphia etc. Co. (Del.), 57 Atl. 242. See, also, Downing v. Coreoran (Mo. App.), 87 S. W. 114; Wilson v. D. W. Alderman & Sons Co. (S. C.), 48 S. E. 85; Driscoll v. Smith, 184 Mass. 221, 68 N. E. 211.

¹⁵ Valentine v. Schreiber, 3 App. Div. 235, 38 N. Y. Supp. 417 (plowing road in which the plaintiff had a right of way); Herman v. Roberts, 119 N. Y. 37, 16 Am. St. Rep. 800, 23 N. E. 442, 7 L. R. A. 226 (drawing heavy loads over the plaintiff's way, so as to cut it up and make repairs necessary); Brandis v. Grissom, 26 Ind. App. 661, 60 N. E. 709 (leaving gates open over right of way).

¹⁶ Yates v. Jack, L. R. 1 Ch. App. 295; Hackett v. Boiss, L. R. 29 Eq. 494; Jordeson v. Sutton etc. Co., [1899] 2 Ch. D. 217, 68 L. J. Ch. 457, 80 L. T., N. S., 815, 63 J. P. 692; Warren v. Brown, 71 L. J. K. B. 12, 1 K. B. 15, 85 L. T. 447, 50 Week. Rep. 97; Staight v. Burr, L. R. 5 Ch. App. 163; Martin v. Price, [1894] 1 Ch. 276; Lazarus v. Artistic Photographic Co., [1897] 2 Ch. D. 214; Home etc. Stores v. Colls, [1902] 1 Ch. 302, 71 L. J. Ch. 146, 85 L. T. 701, 50 Week. Rep. 227; Dent v. Auction Mart Co., L. R. 2 Eq. 238; Martin v. Headou,

ated by grant or covenant,¹⁷ or those which all abutters have over public highways.¹⁸ Another considerable group of cases is that having to do with easements connected with water, as where one has a right to have water come to him through a ditch,¹⁹ raceway,²⁰ or canal²¹ on another's land, or an easement to divert water from its natural course,²² or to have flood waters flow off over another's land,²³ or an easement of drainage,²⁴ or an easement in a reservoir.²⁵ Public easements, as rights of common,²⁶ or the right to have a public square free from buildings or other encroachments,²⁷ are also protected by injunction; and this may be procured by a private individual who shows special injury to himself, just as public nuisances may be en-

L. R. 2 Eq. 425; *Ecclesiastical Commrs. v. Kino*, L. R. 14 Ch. D. 213; *Robson v. Edwards*, [1893] 2 Ch. 146.

¹⁷ *Brown v. O'Brien*, 168 Mass. 484, 47 N. E. 195; *Bloon v. Koch* (N. J.), 50 Atl. 621.

¹⁸ *First Nat. Bank of Montgomery v. Tyson*, 133 Ala. 459, 91 Am. St. Rep. 46, 32 South. 144, 59 L. R. A. 399; *Townsend v. Epstein*, 93 Md. 537, 86 Am. St. Rep. 441, 49 Atl. 629, 52 L. R. A. 409. But see *Doane v. Lake St. etc. Co.*, 165 Ill. 510, 56 Am. St. Rep. 265, 46 N. E. 520, 36 L. R. A. 97.

¹⁹ *Croke v. Am. Nat. Bank of Denver*, 18 Colo. App. 3, 70 Pac. 229; *Gregory v. Nelson*, 41 Cal. 278; *Cave v. Crafts*, 53 Cal. 135.

²⁰ *Fulton v. Greocen*, 36 N. J. Eq. 216.

²¹ *London etc. Co. v. Evans*, [1892] L. R. 2 Ch. D. 432; *Maffet v. Quine*, 93 Fed. 347.

²² *Quimey v. Stocker*, L. R. 1 Ch. App. 396.

²³ *Nininger v. Norwood*, 72 Ala. 277, 47 Am. Rep. 412; *Faris v. Dudley*, 78 Ala. 277, 56 Am. Rep. 24.

²⁴ *Sanderlin v. Baxter*, 76 Va. 299, 44 Am. Rep. 165.

²⁵ *Koenig v. City of Watertown*, 104 Wis. 409, 80 N. W. 728.

²⁶ *Hall v. Byron*, L. R. 4 Ch. D. 667; *Cummings v. City of St. Louis*, 90 Mo. 259, 2 S. W. 130.

²⁷ *Rutherford v. Taylor*, 38 Mo. 315; *Brown v. Manning*, 6 Ohio, 298, 27 Am. Dec. 255; *Wheeler v. Bedford*, 54 Conn. 244, 7 Atl. 22; *Sturmer v. County Court etc. County*, 42 W. Va. 724, 26 S. E. 532, 36 L. R. A. 300. To the effect that an abutting owner may maintain suit, see *Fessler v. Town of Union* (N. J. Eq.), 56 Atl. 72.

joined by private parties.²⁸ Easements of support, as in a party-wall,²⁹ and easements of access to a street or highway³⁰ are other cases in which injunctions have been granted. A mere license when acted on so as to create an estoppel will also be protected by injunction as if it were an easement.³¹ This list is not exhaustive, but it includes the more common classes of cases in which injunctions to prevent disturbance of easements have been issued.³² On the other hand, one who has a right to an easement may be denied equitable relief for its disturbance because of his own inequitable conduct in reference to it.³³ And he himself will be enjoined at the suit of the owner of the servient tenement if he attempts to increase the easement, to which he is entitled, beyond its rightful limits;³⁴ in such case he is a trespasser.

²⁸ *Rowzee v. Pierce*, 75 Miss. 846, 65 Am. St. Rep. 625, 23 South. 307, 40 L. R. A. 402; *City of Chicago v. Ward*, 169 Ill. 392, 61 Am. St. Rep. 185, 38 L. R. A. 849, 48 N. E. 927; *Smith v. Heuston*, 6 Ohio, 101, 25 Am. Dec. 741. See, also, cases cited in last note, *supra*.

²⁹ *Phillips v. Bordman*, 4 Allen, 147.

³⁰ *Cunningham v. Fitzgerald*, 138 N. Y. 165, 33 N. E. 840, 20 L. R. A. 244; *West v. Brown*, 114 Ala. 118, 21 South. 452; *Martin v. Heckman*, 1 Alaska, 165 (access to navigable water).

³¹ *Clark v. Glidden*, 60 Vt. 702, 15 Atl. 358. See, also, *Hazelton v. Putnam*, 3 Chand. 117, 54 Am. Dec. 158, 3 Pinn. (Wis.) 107; *Dodge v. Johnson*, 32 Ind. App. 471, 67 N. E. 560 (irrevocable license protected).

³² *Miscellaneous*.—*Piro v. Shipley* (Pa.), 60 Atl. 325. In the following cases injunctions were refused: *Clarke v. Clark*, L. R. 1 Ch. 16; *Robson v. Whittingham*, L. R. 1 Ch. App. 442; *Castle v. Bell Tel. Co.*, 30 Misc. Rep. 38, 61 N. Y. Supp. 743; *Goldsboro etc. Co. v. Hines*, 126 N. C. 254, 35 S. E. 458; *Pendarves v. Monroe*, [1892] L. R. 1 Ch. 611; *Clark v. City of New York*, 32 Misc. Rep. 52, 66 N. Y. Supp. 103; *Bailey v. Gray*, 53 S. C. 503, 31 S. E. 354.

³³ *McBryde v. Sayre*, 86 Ala. 458, 5 South. 791, 3 L. R. A. 861; *McAlister v. Henderson*, 134 Ind. 453, 34 N. E. 221; *Bingham v. Salene*, 15 Or. 208, 3 Am. St. Rep. 152, 14 Pac. 523.

³⁴ *Graves v. Smith*, 87 Ala. 450, 13 Am. St. Rep. 60, 6 South. 308,

§ 548. **The Damage Necessary to Support an Injunction.**—As a matter of reason, it would seem that consistently with the ground of equity to enjoin a continuing tort in order to prevent multiplicity of suits, no discussion of the amount of damage to justify an injunction would be required; that the question in every case would be the purely legal one, What damage is necessary to sustain an action at law? and the rule thus ascertained would control in equity when the wrong complained of is a continuing or recurring one. It has been shown that in dealing with cases of nuisance this is the ground the courts take; hence, for example, a pollution of air will be enjoined only if it causes actual damage to the plaintiff, but a pollution of water may be enjoined, though it causes no such damage, this being the distinction generally made between the two cases in actions at law. In cases of easements, however, this rule of the equity courts has not been followed. The language of Lord Eldon in *Attorney-General v. Nichol*³⁵ is apparently responsible for the anomalous state of the law. That, it will be remembered, was a case of obstruction of ancient lights. The cases in which the question arose of the amount of damage necessary to sustain an injunction seem to have been almost exclusively

5 L. R. A. 298 (making openings in a party-wall); *Danenhauer v. Devine*, 51 Tex. 480, 32 Am. Rep. 627 (same as preceding case); *Everly v. Driskill*, 24 Tex. Civ. App. 413, 58 S. W. 1046 (same as preceding case); *Harber v. Evans*, 101 Mo. 661, 20 Am. St. Rep. 646, 14 S. W. 750, 10 L. R. A. 41 (same as preceding case); *Allegheny etc. Bank v. Reighard* (Pa.), 54 Atl. 268; *Calmelet v. Siehl*, 48 Neb. 505, 58 Am. St. Rep. 700, 67 N. W. 467 (increasing height of party-wall); *Frowenfeld v. Casey*, 139 Cal. 421, 73 Pac. 152 (same as preceding case); *Woods v. Greensboro etc. Co.* (Pa.), 54 Atl. 470.

³⁵ 16 Ves. 338. The language of Lord Eldon was: "There are many obvious cases of new buildings darkening those opposite to them, but not in such a degree that an injunction could be maintained; or an action upon the case; which however might be maintained in many cases which would not support an injunction."

cases of the same sort, with the result that Lord Eldon's *dictum* has been reduced to a rule of law expressed as follows: "We must not always give relief (it was so laid down by Lord Eldon and by Lord Westburn)³⁶ where there would be relief given at law. Having considered it in every possible way, I cannot myself arrive at any other conclusion than this: that where substantial damages would be given at law as distinguished from some small sum of £5, £10, or £20, this court will interpose."³⁷ This doctrine has been recognized frequently by the English courts,³⁸ though sometimes in language which indicates doubts of its soundness,³⁹ and there is at least one case which seems hardly reconcilable with it.⁴⁰ In America what authority

³⁶ *Jackson v. Duke of Newcastle*, 3 De Gex, J. & S. 275.

³⁷ Per Wood, V. C., in *Dent v. Auction Mart Co.*, L. R. 2 Eq. 238.

³⁸ *Martin v. Headon*, L. R. 2 Eq. 425; *Robson v. Whittingham*, L. R. 1 Ch. App. 442; *Staight v. Burn*, L. R. 5 Ch. App. 163; *Warren v. Brown*, 71 L. J. K. B. 12, [1902] L. R. 1 K. B. 15, 85 L. T. 444, 50 Week. Rep. 97; *Martin v. Price*, [1894] L. R. 1 Ch. 276; *Home etc. Stores v. Colls*, [1902] L. R. 1 Ch. 302, 71 L. J. Ch. 146, 85 L. T. 701, 50 Week. Rep. 227; s. c. on appeal, [1904] App. Cas. 179, 212; *Lazarus v. Artistic etc. Co.*, [1897] L. R. 2 Ch. 214.

³⁹ *Johnson v. Wyatt*, 33 L. J. Ch. 394, 397; *Leech v. Schweder*, L. R. 9 Ch. App. 463, 476; *Aynsley v. Glover*, L. R. 18 Eq. 544, 552. The particular passages referred to are collected in 1 Ames, Cases in Eq. Jur., pp. 535, 536, note.

⁴⁰ *Eccles. Commrs. for Eng. v. Kino*, L. R. 14 Ch. D. 213. In this case Brett, L. J., adopted as the test for an injunction that "there must be a substantial deprivation of light, sufficient to render the occupation of the house uncomfortable, or to prevent the plaintiff from carrying on his accustomed business on the premises as beneficially as he had formerly done." In *Dent v. Auction Mart Co.*, *supra*, it was carefully explained that this was the rule for determining whether an action would lie at law, but that it did not control the granting of an injunction. See, also, tending in the same way as Brett's view, the opinions of James, L. J., in the same case, at page 220, and in *Kelk v. Pearson*, L. R. 6 Ch. App. 809, 812, and the opinion of Lord MacNaghten, in *Colls v. Home etc. Stores*, [1904] App. Cas. 179, 193. See, also, *Lloyd v. London etc. Ry.*, 2 De Gex, J. & S. 567, 579. In *Pennington v. Brinsop etc. Co.*, L. R. 5 Ch. D. 769,

there is has divided on the question, though most of the cases adopt the view that substantial damage is necessary to support an injunction.⁴¹

§ 549. *Previous Trial at Law.*—The effect on the plaintiff's right to an injunction of the fact that his legal right has not been settled previously in a suit at law, is the same as in cases of nuisance. As is pointed out in the discussion of that subject, the question is not involved in the granting or refusing of temporary injunctions.⁴² On application for a permanent injunction, if the plaintiff's right is admitted by the defendant, a judgment at law is not required, as it is ob-

773, Fry, J., distinguishes the rule above considered from that applied in cases of the pollution of running water in which an injunction is granted, though there is no actual damage, on the grounds, first, that as obstructions of light are generally permanent, the damages represent the depreciation in the value of the property affected, and that this is not true of the pollution of running water; and, second, that as the plaintiff's use of running water may vary, it is impossible to foresee the extent of damages done by polluting it, while (by way of inference, he says) this is not true of interference of light. The first distinction is contrary to the following cases: *Shadwell v. Hutchinson*, 2 Barn. & Adol. 97; *Battishill v. Reed*, 18 Com. B. 696. See, also, *Darley etc. Co. v. Mitchell*, L. R. 11 App. Cas. 127; *Crumbie v. Wallsend etc. Bd.*, [1891] 1 Q. B. 93. See *Gale on Easements*, 7th ed., p. 556. The second distinction is contrary to *Yates v. Jack*, L. R. 1 Ch. App. 295; *Aynsley v. Glover*, L. R. 18 Eq. 544, 10 Ch. App. 283, which establish fully the doctrine that the plaintiff's right to complain of an infringement of his easement of light does not depend on the use he is actually making of it, but on any use which he may wish to make of it.

⁴¹ *Gray v. Manhattan etc. Co.*, 128 N. Y. 499, 28 N. E. 498; *Wormser v. Brown*, 149 N. Y. 163, 43 N. E. 524; *Greer v. Van Meter*, 54 N. J. Eq. 270, 33 Atl. 794; *Wilson v. Cohen*, Rice Eq. (S. C.) 80; *Castle v. Bell Tel. Co.*, 30 Misc. Rep. 38, 61 N. Y. Supp. 743. *Contra*, *Hacke's Appeal*, 101 Pa. St. 245; *Collins v. Buffalo etc. Co.*, 73 App. Div. 22, 76 N. Y. Supp. 420; *Townsend v. Epstein*, 93 Md. 537, 557, 558, 86 Am. St. Rep. 441, 49 Atl. 629, 52 L. R. A. 409.

⁴² See *Temporary Injunctions*, *infra*, § 556; also chapter on *Nuisance*, *ante*, paragraph on same topic.

Equitable Remedies, Vol. II—60

viously unnecessary in such case.⁴³ So, too, though the defendant denies the plaintiff's right or the fact of a disturbance of it, yet if, on the evidence before it, the court is of the opinion that there is no substantial dispute, but, indeed, that the plaintiff's right is clear, the injunction will issue;⁴⁴ the defendant's right to a trial at law at best extends no further than to doubtful questions. And even when the questions in dispute are doubtful, the court of equity will pass on them, if both parties consent or submit to the jurisdiction.⁴⁵ When, however, there is a substantial dispute between the parties, and they have not submitted to have it decided by the equity proceedings, the equity court will generally require the plaintiff to establish his right at law before granting an injunction.⁴⁶ This rule is one of expediency and policy based on the reluctance of equity to decide purely legal questions, and there is a tendency

⁴³ *Kean v. Asch*, 27 N. J. Eq. 57; *Shivers v. Shivers*, 32 N. J. Eq. 578; *Gorton v. Tiffany*, 14 R. I. 95; *Bright v. Allan*, 203 Pa. St. 386, 53 Atl. 248.

⁴⁴ *Manbeck v. Jones*, 190 Pa. St. 171, 42 Atl. 536; *Hunter v. Wilcox*, 23 Pa. Co. Ct. Rep. 191; *Robertson v. Meyer* (N. J.), 45 Atl. 983; *Richmond v. Bennett*, 205 Pa. St. 470, 55 Atl. 17; *White v. Flannigan*, 1 Md. 525, 54 Am. Dec. 668; *Hacke's Appeal*, 101 Pa. St. 245; *Boyd v. Woolwine*, 40 W. Va. 282, 21 S. E. 1020.

⁴⁵ The following cases in which the equity courts decided the legal questions involved, nothing being said as to a previous trial at law, are probably to be put upon this ground: *Ivimey v. Stocker*, L. R. 1 Ch. App. 396 (legal effect of a custom); *Corbett v. Jonas*, [1892] L. R. 3 Ch. D. 137 (constructions of agreement implied in a sale of land); *Phillips v. Treeby*, 8 Jur., N. S., 999 (construction of agreement out of which the easement arose); *Wheaton v. Maple*, [1893] L. R. 3 Ch. D. 48 (question of prescription and construction of a statute); *Newman v. Nellis*, 97 N. Y. 285 (construction of agreement implied in a sale).

⁴⁶ *Rhea v. Forsyth*, 37 Pa. St. 503, 78 Am. Dec. 441; *Oswald v. Wolf*, 129 Ill. 200, 21 N. E. 839; *Perkins v. Foye*, 60 N. H. 496; *Oppenheim v. Loftus* (N. J.), 50 Atl. 795; *Hart v. Leonard*, 42 N. J. Eq. 416, 7 Atl. 865; *Bailey v. Culver*, 84 Mo. 531; *Howell Co. v. Pope etc. Co.*, 171 Ill. 350, 49 N. E. 497.

to disregard it in modern cases, even in the restricted form above stated. Accordingly it has been said that the equity court should itself determine the legal questions involved as an incident to its determination of the propriety of granting an injunction.⁴⁷ In another case, the court remarked: "The point disputed is the character of the use which he is entitled to make of the way—a question, not of fact to be found by a jury, but of law to be determined by a court upon an inspection of the alleged grant."⁴⁸ And it has also been held that an injunction may issue without trial at law if the plaintiff has long enjoyed the privilege, interference with which is complained of.⁴⁹

§ 550. Threatened Disturbances—Nature of the Threat.—In dealing with cases of threatened disturbances of easements the courts apply the requirement usual to cases of threatened injuries, viz., that there must be imminent danger of the wrong occurring. Hence, when the defendant had erected a hoarding which obstructed the light coming to the plaintiff's building over the defendant's premises, for the purpose of testing the plaintiff's right, an injunction against the erection of a building of the same height as the hoarding was refused on the ground that there was no threat of erecting such

⁴⁷ *White v. Tide Water Oil Co.*, 50 N. J. Eq. 1, 25 Atl. 199; *Fulton v. Greacen*, 36 N. J. Eq. 216, 221. To the same effect in case of nuisance, see *Spokane etc. Co. v. Post*, 50 Fed. 429.

⁴⁸ *Shreve v. Mathis*, 63 N. J. Eq. 170, 52 Atl. 234. In the following cases, also, the equity courts construed instruments in order to determine the plaintiff's legal rights: *Hay v. Knauth*, 36 App. Div. 612, 55 N. Y. Supp. 680; *Avery v. New York etc. Co.*, 106 N. Y. 142, 20 N. E. 619.

⁴⁹ *Sanderlin v. Baxter*, 76 Va. 299, 44 Am. Rep. 165. See, also, *Nicolls v. Wentworth*, 100 N. Y. 455, 3 N. E. 482. For other cases on the general topic of the above paragraph of the text, see 1 Ames, *Cases in Eq. Jur.*, p. 552, which has furnished some of those cited in these notes to it.

a building, although the defendant was required to give an undertaking to give notice of his intention to build, and liberty to apply for an injunction was reserved to the plaintiff.⁵⁰ If a defendant is planning to build, however, that is a sufficient threat, and an injunction may be procured before the building is even commenced.⁵¹ So it is held that a sufficient threat is shown if the defendant merely claims the right to do the anticipated wrongful act, although he denies any present intention to act upon it;⁵² or, if a wrongful act is being done, it seems that is a sufficient threat of intention to repeat it, even if it were put an end to by abatement in a suit at law or otherwise.⁵³

§ 551. *Nature of the Injury Threatened.*—The character of the threatened injury which will justify an injunction is simply that which would support an injunction on any ground, if it were already being done. Thus in an English case of apprehended obstruction of ancient lights, the court, after stating the principles which govern the subject, continued: "The application of these principles is far more easy when the building which is complained of has been erected and damages only are claimed; but they have to be applied when the plaintiff comes for an injunction before the building has been erected. It is the duty of the court to arrive at the best conclusion it can upon the effect which the proposed building, if erected, would produce; and if the court is satisfied that in that event the plaintiff would have a good cause of action, the plaintiff is entitled, as a matter of right, to an injunction to prevent the

⁵⁰ *Smith v. Baxter*, [1900] L. R. 2 Ch. D. 133.

⁵¹ *Aynsley v. Glover*, L. R. 10 Ch. App. 283.

⁵² *Hall v. Byron*, L. R. 4 Ch. D. 667.

⁵³ *Cadigan v. Brown*, 120 Mass. 493; *Riverdale Park Co. v. Westcott*, 74 Md. 311, 28 Am. St. Rep. 249, 22 Atl. 270.

defendant from interfering with his ancient light; or, in other words, to restrain the defendant from committing a wrongful act.”⁵⁴ Hence, if the threat is only of such a tort as would give jurisdiction to a court of equity for the purpose of preventing multiplicity of suits, an injunction will nevertheless issue.⁵⁵

§ 552. *The Balance of Injury.*—The question how far a court should be influenced in its decision, whether to grant or to refuse an injunction, by a comparison of the injury to the defendant from granting it with the injury to the plaintiff from refusing it, has aspects very similar to those presented by the same question in cases of trespass. On the one side, there is the ar-

⁵⁴ *Home etc. Stores v. Colls*, [1902] L. R. 1 Ch. 302, 71 L. J. Ch. 146, 85 L. T. 701, 50 Week. Rep. 227. By the words, “cause of action,” in the above quotation the court probably meant that substantial damage before referred to in the text which the English courts seem to require to support an injunction against the obstruction of light. For in the same paragraph from which the quotation is taken the court said: “Without substantial interference, there is no right of action; and, in addition, in order to obtain an injunction, the plaintiff must establish substantial injury suffered or threatened.”

⁵⁵ *Cadigan v. Brown*, 120 Mass. 493; *Riverdale Park Co. v. Westcott*, 74 Md. 311, 28 Am. St. Rep. 249, 22 Atl. 270. In the first of these cases the court, in overruling a demurrer for want of equity to a bill to enjoin obstruction of a right of way, said, per Morton, J.: “The injury to the plaintiff is permanent and continuous, and a judgment for damages would not furnish them adequate relief. It is true that in an action of tort for the nuisance, they might also obtain a judgment that the nuisance be abated and removed. But the power of a court of law can go no further than to remove the nuisance, while a decree of a court of equity may restrain the continuance or repetition of the nuisance.” The basis of equity jurisdiction here is thus admittedly the prevention of multiplicity of suits; and, as the court also admits that the existing tort might be abated by a judgment at law, it is clear there is no reason for coming into equity as to it, but only to prevent its repetition; hence it is the purely threatened, as distinguished from the existing, tort that supports the jurisdiction.

gument against granting injunctions which are oppressive or harsh to the defendant; on the other, the consideration that to refuse the injunction is to compel the plaintiff to sell his property against his will at a valuation, and that, too, in a case in which his legal remedy is admittedly inadequate (for the question does not arise, of course, till the jurisdiction of equity over the particular case has been established). It is probable that the apparent discrepancies between the cases on this point may, to some extent at least, be explained by the fact that the courts tend to give effect to the considerations which, in the particular case before them, outweigh on one side or the other, without a full discussion of the limits of the doctrine. Hence, it is not strange that as fairly typical cases as are to be found on both sides of the question come from the same jurisdiction. Thus, in one Massachusetts case⁵⁶ the court refused an injunction to remove buildings, because they had been erected innocently, and, as the plaintiff's tenancy was shortly to expire, the injury to him would be very small if the injunction were refused. But when the defendant continued to erect an obstruction over the plaintiff's right of way, knowing the plaintiff contested his right to do so, and the damage to the plaintiff was substantial, the same court granted an injunction, although the damage to the defendant from doing so was more than twice that which the plaintiff would have suffered from its refusal.⁵⁷ And the supreme court of Michigan in a bill to enjoin the defendant from encroaching three inches on the plaintiff's right of way for the purpose of improving his building, refused injunction because the defendant had begun his improvements, at least, in good faith, and the

⁵⁶ *Brande v. Grace*, 154 Mass. 210, 31 N. E. 633.

⁵⁷ *Tucker v. Howard*, 128 Mass. 361.

encroachment did not seriously interfere with the right of way, while enjoining it would have been a serious damage to the defendant.⁵⁸ But when the defendant proposed to change a stairway in which the plaintiff had an easement, and, pending a suit to enjoin him, actually did so, the same court compelled him to restore the stairway as it had been before, although to do so cost a large sum of money, while the testimony was contradictory whether the plaintiff would suffer any serious injury from the change of the easement or not.⁵⁹ None of these cases make a full statement of the conditions under which the balance of injury shall be considered. They all agree in one particular, however, viz., that the defendant who would claim its consideration in his favor must have committed the tort innocently;⁶⁰ a willful wrong-doer is entitled to claim no favor. Doubtless all courts will agree, too, in holding that it shall not have any weight against an injury to the plaintiff of an irreparable character;⁶¹ and prob-

⁵⁸ Hall v. Rood, 40 Mich. 46, 29 Am. Rep. 528.

⁵⁹ Ives v. Edison, 124 Mich. 402, 83 Am. St. Rep. 329, 83 N. W. 120, 50 L. R. A. 134.

⁶⁰ There is no apparent agreement among them, however, as to what would constitute an innocent infringement. Thus, in *Brande v. Grace*, *supra*, the court thought the defendant acted innocently because he committed the encroachment after the lower court had decided as a matter of law that the plaintiff had no right, and pending an appeal. In *Ives v. Edison*, *supra*, the facts were identical except that the decision of the lower court was simply that an injunction was not proper, instead of a denial of the plaintiff's legal right, and the court thought defendant's act was not an innocent wrong-doing; but in *Hall v. Rood*, *supra*, the same court thought the defendant satisfied the requirement of good faith because he began the tort in good faith, although the plaintiff objected at once to the encroachment. It would seem that on this point *Hall v. Rood* is wrong, and *Brande v. Grace* at least doubtful. It is hard to see how anyone can claim any immunity for a tort on the ground that it was innocently done, when at the time of doing it he knew his right to do it was disputed by the person affected.

⁶¹ See *Hall v. Rood*, 40 Mich. 46, 49, 29 Am. Rep. 528. Courts may

ably it will be held that the disproportion of injury to be done by granting the injunction or by refusing it must be very strong in favor of the defendant, to bar granting it. For in cases in which the legal remedy is admittedly inadequate courts of equity will not readily permit a "wrong-doer to compel innocent persons to sell their right at a valuation."⁶²

§ 553. **Plaintiff's Right an Absolute One.**—Defenses to infringements of easements are often attempted on the theory that the plaintiff has no right to a definite thing, at least not so far as equitable protection is concerned, but only to a certain amount of utility or convenience over the defendant's land. This argument has been steadfastly denied by the courts, on the ground that the plaintiff has a definite property right, which he may protect just as he may his ownership of land. Hence, it has been held no defense to a bill that the plaintiff had more light⁶³ or a more extensive right of way⁶⁴ than he needed, and so was not entitled to enjoin an

differ on the point whether the injunction should not issue if the damages from the disturbance are substantial, even though not irreparable. See the chapter on Trespass, *ante*, on the same point.

⁶² Per Gray, C. J., in *Tucker v. Howard*, 128 Mass. 361. In the following cases the balance of injury was not given any effect: *First Nat. Bank of Montgomery v. Tyson*, 133 Ala. 459, 91 Am. St. Rep. 46, 59 L. R. A. 399, 32 South. 144; *Nininger v. Norwood*, 72 Ala. 277, 47 Am. Rep. 412; *Krehl v. Burrell*, L. R. 7 Ch. D. 551. In the following cases it was said the court would be influenced by the balance of injury: *Haskell v. Denver etc. Co.*, 23 Colo. 60, 46 Pac. 121 (public injury); *Bailey v. Culver*, 84 Mo. 531; *St. Louis etc. Bank v. Kennett Estate* (Mo. App.), 74 S. W. 474; *Gray v. Manhattan etc. Co.*, 128 N. Y. 499, 28 N. E. 498; *Wormser v. Brown*, 149 N. Y. 163, 43 N. E. 524; *Collins v. Buffalo etc. Co.*, 73 App. Div. 22, 76 N. Y. Supp. 420; *Currier's Co. v. Corbett*, 2 Drew. & S. 355, 360; *Heilman v. Lebanon etc. Co.*, 180 Pa. St. 627, 37 Atl. 119 (both public and private injury). See, also, *Fisk v. Ley*, 76 Conn. 295, 56 Atl. 559.

⁶³ *Theed v. Debenham*, L. R. 2 Ch. D. 165. See, also, *Dyer's Co. v. King*, L. R. 9 Eq. 438.

⁶⁴ *White v. Tide Water Oil Co.*, 50 N. J. Eq. 1, 25 Atl. 199.

obstruction. Nor can the defendant justify on the ground that he is willing to give the plaintiff something equally beneficial but different from that to which the plaintiff has a legal right, as an aqueduct in place of a ditch.⁶⁵ "It is the duty of the courts," said the judge in this case, "to protect a party in the enjoyment of his private property, not to license a trespass upon such property, or to compel the owner to exchange the same for other property to answer private purposes or necessities." And it has been held the same way with reference to giving reflected light instead of the direct rays to which the plaintiff was entitled, and which the defendant's building obstructed.⁶⁶ Nor can the defendant take advantage of the fact that the plaintiff is himself obstructing his easement; it is nothing to the defendant what the plaintiff may wish to do with his own property.⁶⁷ Within the same general principle are the cases in which it is urged that the plaintiff is not entitled to an injunction because he can easily obviate the injury by means of his own. This argument is admissible, if at all, only within very narrow limits. Thus, when it was argued that the plaintiffs should not be given an injunction against interference with their light because they might have made their windows larger, the court said: "I apprehend it is not for the defendants to tell the plaintiffs how they are to construct their house, and to say, 'You can avoid this injury by doing something for which you would have no protection.' If the plaintiffs constructed their new window it could be immediately obstructed as being

⁶⁵ Gregory v. Nelson, 41 Cal. 278. See, also, Martin v. Price, [1894] L. R. 1 Ch. D. 276.

⁶⁶ Dent v. Auction Mart Co., L. R. 2 Eq. 238; Staight v. Burn, L. R. 5 Ch. App. 163; Hackett v. Baiss, L. R. 20 Eq. 494.

⁶⁷ Staight v. Burn, L. R. 5 Ch. App. 163.

a new window. They have a right already acquired by their old existing window; that right they wish to have preserved intact; and I think they are clearly entitled to retain the right as they acquired it, without being compelled to make any alteration in their house to enable other people to deal with their property.”⁶⁸

§ 554. **Relief Given.**—In cases of disturbance of easements the courts have had occasion to discuss the granting of mandatory injunctions more often, perhaps, than in any other subject, because the tort more frequently than elsewhere consists in the creation of some permanent obstacle in the way of the exercise of the plaintiffs' right. In *Smith v. Smith*⁶⁹ Sir George Jessel made the following able criticism of a somewhat common attitude towards them and clear statement of their controlling principle: “As to mandatory injunctions, their history is a curious one, and may account for some of the expressions used by the judges in some of the cases cited. At one time it was supposed that the court would not issue mandatory injunctions at all. At a more recent period, in cases of nuisance, a mandatory injunction was granted under the form of restraining the defendant from continuing the nuisance.”⁷⁰ The

⁶⁸ *Dent v. Auction Mart Co.*, L. R. 2 Eq. 238; *Nye v. Clark*, 55 Mich. 599, 22 N. W. 57. See, however, *Lining v. Geddes*, 1 McCord Ch. (S. C.) 304, 16 Am. Dec. 606, in which the court refused to enjoin the building of a fence or cutting a ditch across a right of way, “either of which could be done in less time than a bill for an injunction could be drawn, and might be removed in less time than the motion for the dissolution of the injunction could be argued.” The only ground of equity jurisdiction which the court recognized, however, was irreparable injury. *Query*, what the decision would have been if the prevention of multiplicity of suits had been admitted as a basis for equitable interference.

⁶⁹ L. R. 20 Eq. 500.

⁷⁰ See the form of injunction in *Lane v. Newdigate*, 10 Ves. 192.

court seems to have thought that there was some wonderful virtue in that form,⁷¹ and that extra caution⁷² was to be exercised in granting it. To that proposition I can by no means assent. Every injunction requires to be granted with care and caution, and I do not know what is meant by extraordinary caution. Every judge ought to exercise care, and it is not more needed in one case than in another. In looking at the reason of the thing, there is not any pretense for such a distinction as was supposed to exist between this and other forms of injunction. If a man is gradually fouling a stream with sewage, the court never has any hesitation in enjoining him. What difference could it make if instead of fouling it day by day he stopped it altogether? When once the principle was established, why should it make any difference that the wrong-doer had done the wrong, or practically done it before the bill was filed? It could make no difference where the plaintiff's right remained and had not been lost by delay or acquiescence." The argument thus made is sound in reason and has been frequently acted upon by the courts.⁷³ As will be shown subsequently

⁷¹ For other criticisms of this roundabout form of mandatory injunction, see *Blakemore v. Glamorganshire etc. Co.*, 1 Mylne & K. 154, and *Jackson v. Normanby etc. Co.*, [1899] L. R. 1 Ch. 438.

⁷² See *Durell v. Pritchard*, L. R. 1 Ch. App. 244; *Bailey v. Schnitzius*, 45 N. J. Eq. 178, 16 Atl. 680.

⁷³ Mandatory injunctions requiring the defendant to remove obstructions to easements (destructive acts) were granted in the following cases: *Stallard v. Cushing*, 76 Cal. 472, 18 Pac. 427; *Russell v. Napier*, 80 Ga. 77, 4 S. E. 857; *Shivers v. Shivers*, 32 N. J. Eq. (5 Stew.) 578; *Hunt v. Sain*, 180 Ill. 372, 54 N. E. 970; *Baskett v. Tippin*, 23 Ky. Law Rep. 1895, 66 S. W. 374; *Lake Erie etc. Co. v. Essington*, 27 Ind. App. 291, 60 N. E. 457; *Bright v. Allan*, 203 Pa. St. 394, 93 Am. St. Rep. 769, 53 Atl. 251; *O'Brien v. Goodrich*, 177 Mass. 32, 58 N. E. 151; *White v. Tide Water Oil Co.*, 50 N. J. Eq. 1, 25 Atl. 199; *Haight v. Littlefield*, 71 Hun, 235, 24 N. Y. Supp. 1097; *Boland v. St. John's School*, 163 Mass. 229, 39 N. E. 1035.

it does not apply to the granting of temporary injunctions; and there is also one situation in which a difference may be made between prohibitory and mandatory injunctions even on applications for permanent injunctions. That situation is found in the small class of cases in which, under the limitations already indicated, the courts may properly give effect to the balance of injury as a reason for refusing an injunction. The reason for this is inherent in the nature of the case. If the balance of injury is to be applied, the fact that the defendant has a structure erected or other work done, which an injunction would compel him to destroy, makes the injury to be done to him by it so much greater than if a prohibitory injunction against it before its beginning had been granted.⁷⁴

§ 555. **Form of Injunction.**—The form in which injunctions against disturbance of easements are to be expressed has only two points calling for mention. The

Constructive acts were ordered in the following cases: *Parker v. Wilson*, 66 Ill. App. 91 (restoration of tiling and a ditch); *Henry v. Koch*, 80 Ky. 391, 44 Am. Rep. 484 (repair of a building); *Ives v. Edison*, 124 Mich. 402, 83 Am. St. Rep. 329, 83 N. W. 120, 50 L. R. A. 134 (construction of a stairway). See, also, *Cleaver v. Mahanke*, 120 Iowa, 77, 94 N. W. 279; *Springer v. Darlington*, 207 Ill. 238, 69 N. E. 946 (breach of party-wall agreement).

⁷⁴ This is the justification of the language of the court in *Brande v. Grace*, 154 Mass. 210, 31 N. E. 633, in which Allen, J., said: "In this case it is plain that the alterations are inconsistent with the rights of the plaintiffs under their lease. Under this state of things the defendants might properly have been enjoined from proceeding with their proposed alterations. . . . The rules under which mandatory injunctions have been issued for such a purpose should not be applied in a case like this." (For a fuller statement of this case see *ante*, paragraph on "The Balance of Injury.") In view of his language quoted in the text this must also be the meaning of Sir George Jessell in *Hackett v. Baiss*, L. R. 20 Eq. 494, 497: "I do not think with a completed building that the mere fact of its being a few inches too high would have induced the

first of these is the curious, indirect way in which mandatory injunctions have often been framed. Criticisms of this form in later cases have been referred to before,⁷⁵ and it can safely be said that the courts will discard it in favor of more direct statement of the decree made. The second point to be spoken of is the form used in that class of cases in which, like many nuisances, the tort itself arises out of a balancing of conveniences, and not *per se* from the mere doing of acts regardless of the manner in which or the extent to which they are done. Such are cases of diminution of light or of excessive or otherwise unreasonable use of a right of way. In this class of cases the courts so frame the injunctions as to preserve to the defendant the right to do the acts in question within legal limits.⁷⁶

§ 556. **Temporary Injunctions.**—In granting temporary injunctions to protect easements, as in other cases, the court does not take jurisdiction for the purpose of settling the rights of the parties permanently, but simply to preserve the property until the legal title to it is established.⁷⁷ The title which the plaintiff must show in such a case is not, of course, an incontestable one; “he

court to grant a mandatory injunction, even if the plaintiff’s counsel had not waived it.” See, also, *Collins v. Buffalo etc. Co.*, 73 App. Div. 22, 76 N. Y. Supp. 420.

⁷⁵ See *ante*, § 554, note 71.

⁷⁶ *Yates v. Jack*, L. R. 1 Ch. App. 295, 298 (light); *Hall v. Byron*, L. R. 4 Ch. D. 667 (rights of common); *Herman v. Roberts*, 119 N. Y. 37, 16 Am. St. Rep. 800, 23 N. E. 442, 7 L. R. A. 226 (right of way); *Cunningham v. Fitzgerald*, 138 N. Y. 165, 33 N. E. 840, 20 L. R. A. 244 (right of access on street). In *Hackett v. Baiss*, L. R. 20 Eq. 494, the injunction specified the particular height to which a building might go. In *Walker v. Brewster*, L. R. 5 Eq. 25, the court refused to adopt a specific form. And see *Parker v. First Ave. Hotel*, L. R. 24 Ch. D. 282.

⁷⁷ *Fulton v. Greacen*, 86 N. J. Eq. 216; *Todd v. Staats*, 60 N. J. Eq. 507, 46 Atl. 645.

makes out a sufficient case when he satisfies the court that his claim is a substantial one, and that there is reasonable ground for doubting the validity of the title of his adversary.”⁷⁸ The injury against which protection is sought is that which is likely to occur before the question of title between the parties can be settled, that is, in the limited time before a decision of the pending suit can be had. Therefore the plaintiff must allege facts which show danger of such serious injury occurring in this time, as to require intervention of equity to protect the property, while the title to it is still in doubt. Hence the statement is frequently made that he must show a “strong and mischievous case of pressing necessity.”⁷⁹ This ordinarily means that he must show danger of irreparable injury,⁸⁰ though it might be sufficient if he should establish that the defendant was insolvent;⁸¹ or, it would seem enough, if, for any other reason, the legal remedy for the wrong done pending the litigation would be inadequate. As the injunction is always granted at the risk of restraining one in the use of property to which he may eventually prove entitled, and refused at the risk of denying protection to a plaintiff who is entitled to it, the courts may properly inquire into the balance of injury here, and this is the

⁷⁸ Id.

⁷⁹ Robeson v. Pittenger, 2 N. J. Eq. (1 H. W. Green) 57, 32 Am. Dec. 412; Oswald v. Wolf, 129 Ill. 200, 21 N. E. 839.

⁸⁰ See the following cases in which temporary injunctions were refused because the plaintiff did not make out a sufficiently strong case of danger: Oswald v. Wolf, 129 Ill. 200, 21 N. E. 839; Naylor v. Carson (N. J.), 49 Atl. 529; Amelung v. Seekamp, 9 Gill & J. (Md.) 468; Gulick v. Fisher, 92 Md. 353, 43 Atl. 375; O'Rourke v. City of Orange, 51 N. J. Eq. (6 Dick.) 561, 26 Atl. 858. In Oswald v. Wolf, *supra*, the court, in refusing the injunction, said: “No interest will be jeopardized, no irreparable damage incurred by the delay necessary to a trial of his rights in that tribunal.”

⁸¹ See Raleigh etc. Co. v. Glendon etc. Co., 112 N. C. 661, 17 S. E. 77.

practice followed.⁸² Ordinarily the relief afforded by temporary injunctions is prohibitory in nature, and it is sometimes said that mandatory temporary injunctions will not be readily granted,⁸³ though it is admitted they can be used when a strong enough case is made. "The court is always very reluctant to grant a mandatory injunction on an interlocutory application, but where extreme or very serious damage would ensue from withholding it, as in cases of interference with easements, or other cases demanding immediate relief, it will be granted."⁸⁴ This reluctance of the courts to grant such injunctions does not represent any difference of principle governing their issuance, but rather a difference in the state of facts. Here, as in applications for prohibitory injunctions, the court must first be satisfied that there is a case of threatened injury for which the legal remedy will be inadequate, and, second, that the balance of injury does not even then require the injunction to be refused. And as the mandatory injunction requires the defendant to destroy or remove property, the balance of injury to him from granting an injunction is by that much increased.⁸⁵

⁸² *Fulton v. Greacen*, 36 N. J. Eq. (9 Stew.) 216, 220, 221; *Brower v. Williams*, 44 App. Div. 337, 60 N. Y. Supp. 716; *Darlington etc. Co. v. Pee Dee etc. Co.*, 62 S. C. 196, 40 S. E. 169. Temporary prohibitory injunctions were granted in the following cases: *Staight v. Burn*, L. R. 5 Ch. App. 163; *Ecclesiastical Commrs. for England v. Kino*, L. R. 14 Ch. D. 213; *Bock v. Stacey*, 2 Russ. 121; *Lord Battersea v. Commissioners etc. London*, [1895] L. R. 2 Ch. D. 708; *Robeson v. Pittenger*, 2 N. J. Eq. (1 H. W. Green) 57, 32 Am. Dec. 412; *Johnston v. Hyde*, 25 N. J. Eq. 454, 33 N. J. Eq. 632; *Stuyvesant v. Early*, 33 Misc. Rep. 644, 68 N. Y. Supp. 903; *Moffet v. Quine*, 93 Fed. 347; *Darlington etc. Co. v. Pee Dee etc. Co.*, 62 S. C. 196, 40 S. E. 169; *Sutter v. Heckman*, 1 Alaska, 81.

⁸³ "The Lord Chancellor said he never knew an order to pull down anything on motion": *Ryder v. Bentham*, 1 Ves. Sr. 543.

⁸⁴ *Whitecar v. Michenor*, 37 N. J. Eq. (10 Stew.) 6, 14.

⁸⁵ Temporary mandatory injunctions were granted in the following cases: *Hodge v. Giese*, 43 N. J. Eq. (16 Stew.) 342, 11 Atl. 484;

§ 557. Effect of Change of Conditions Pending Suit; On Permanent Injunctions.—The refusal of a temporary injunction does not affect the decree which will be made at the hearing. The defendant who pending the suit changes the existing condition, as by the erection of a building, does so at his own risk that the right may ultimately prove to be in the plaintiff. He cannot in such cases claim the advantage that the balance of injury might otherwise allow him, because he has acted with full notice of the other party's claim.⁸⁶ And it is equally true, of course, that the plaintiff cannot rely upon the granting of a temporary injunction to strengthen his case at the hearing, nor as giving him a warrant to change his position in the expectation of doing so. The decree at the hearing, in other words, is wholly unaffected by the disposition of the motion for a temporary injunction.⁸⁷ A defendant who violates a permanent injunction, by doing some work which has been prohibited will, of course, be compelled to undo it; he is in contempt and it will be "a mild use of the judge's discretion" if he is required to do no more than this.⁸⁸ But when a defendant who had been temporarily enjoined from erecting structures beyond a certain height, violated the temporary injunction by the

Beadel v. Perry, L. R. 3 Eq. 465; *Ryder v. Bentham*, 1 Ves. Sr. 543; *Hervey v. Smith*, 1 Kay & J. 389. See, also, *Staight v. Burn*, L. R. 5 Ch. App. 163, 166; *Longwood etc. Co. v. Baker*, 27 N. J. Eq. 166. A temporary mandatory injunction was refused in *Bailey v. Schnitzius*, 45 N. J. Eq. 178, 16 Atl. 680. See, also, in general, *post*, chapter XXX.

⁸⁶ *Tucker v. Howard*, 128 Mass. 361; *Naylor v. Carson* (N. J.), 49 Atl. 529; *Krehl v. Burrell*, L. R. 7 Ch. D. 551, affirmed in L. R. 11 Ch. D. 146; *Botsford v. Wallace*, 72 Conn. 195, 44 Atl. 10; *Parker v. First Ave. Hotel Co.*, L. R. 24 Ch. D. 287; *Home etc. Stores v. Colls*, [1902] L. R. 1 Ch. D. 302, 313, 314.

⁸⁷ See *Daniel v. Ferguson*, [1891] L. R. 2 Ch. D. 27; *Von Joel v. Hornsey*, [1895] L. R. 2 Ch. D. 774; *Beadel v. Perry*, *infra*.

⁸⁸ *Murphey v. Harker*, 115 Ga. 77, 41 S. E. 585.

erection of certain chimneys, the court nevertheless on the hearing refused to order them removed because they caused no material injury.⁸⁹ Here, too, the defendant was in contempt and might have been punished for it, but as the hearing showed he ought not to have been enjoined from erecting the chimneys by the temporary injunction, clearly there was no ground for compelling him to tear down what he might afterwards build up again. The defendant had neither harmed nor helped himself as to the matter of final equitable relief, by disobeying the injunction.

§ 558. On Temporary Injunctions.—A very similar question to this may be brought before the court on applications for temporary injunctions. A person who has been served with notice of a motion for a temporary injunction against the erection of a building, rushes work on the building with a large force of men, till the hearing of the motion. Has he affected his case with reference to the granting of a temporary injunction either for good or ill? All courts are agreed that he has not strengthened his position. They will not give any weight to the balance of injury in his favor thus created, as to do so, would be to encourage circumvention of the court's jurisdiction.⁹⁰ On the other hand there are intimations in some of the English cases that such an erection will be ordered down even in cases in which it would not have been prohibited, "on the ground that the

⁸⁹ *Beadel v. Perry*, 19 L. T., N. S., 760, 17 Week. Rep. 185; s. c. (on earlier hearing), L. R. 3 Eq. 165, 15 L. T., N. S., 345, 15 Week. Rep. 120.

⁹⁰ *Smith v. Day*, L. R. 13 Ch. D. 651; *Daniel v. Ferguson*, [1891] L. R. 2 Ch. D. 27; *Von Joel v. Hornsey*, [1895] L. R. 2 Ch. D. 774; *Grey v. New York etc. Co.*, 56 N. J. Eq. (11 Dick.) 463, 40 Atl. 21. See, also, *Beadel v. Perry*, L. R. 3 Eq. 456, 15 L. T., N. S., 345, 15 Week. Rep. 120.

erection of it was an attempt to anticipate the order of the court.”⁹¹ This is clearly imposing punishment on the defendant, although he is not in contempt, and may easily subject him to an interlocutory injunction in cases in which, tried by the rules of injunction as measured by the plaintiff’s title to it, the facts are not appropriate for granting that relief. It would seem that if such cases were approached just as though the application were for the prohibitory injunction which would have been sought but for the defendant’s attempt to gain a wrongful advantage, and if the mandatory injunction were granted or withheld according as the prohibitory injunction would, in that situation, have been granted or withheld, better results would be reached.⁹² Even

⁹¹ Per Kay, L. J., in *Daniel v. Ferguson*, *supra*. The facts of this case are those supposed in the opening of the above paragraph of the text. See, also, *Keeble v. Poole*, 105 L. T. 474, 42 Sol. Jour. 791; *Colls v. Home etc. Stores*, [1894] App. Cas. 179, 193. In *Von Joel v. Hornsey*, *supra*, the defendant for several days evaded service of writ in an action to enjoin him from erecting a new building, and meantime hurried the building on. The court, on the hearing of the motion for a temporary injunction, ordered so much of the building as had been erected after the issuance of the writ to be pulled down, Lindley, L. J., saying: “If builders will take the chance of running up a building in that way, they must take the risk of pulling it down.”

⁹² In *Daniel v. Ferguson*, *supra*, Lindley, L. J., said: “The plaintiff makes out a case entitling him to an injunction to keep matters in *statu quo* till the trial. That being so, the defendant, upon receiving notice that an injunction is going to be applied for, sets a gang of men to work and runs up his wall to a height of thirty-nine feet before he receives notice that an injunction has been granted. It is right that buildings thus run up should be pulled down at once, without regard to what the result of the trial may be.” The opening sentence of this quotation makes it seem that he had in mind the suggestion of the text; nor is the sentence quoted from the opinion of the same judge, in *Von Joel v. Hornsey*, *supra*, last note preceding, necessarily inconsistent with it. It does not appear in *Von Joel v. Hornsey* but that a prohibitory injunction would have been allowed, had the defendant not hurried his building on. In *Grey v. New York etc. Co.*, *supra*, the defendant company, fearing a rival company might delay or defeat its plans to procure consent from a

if it is necessary or desirable in such a case to inflict punishment on the defendant, which is, perhaps, doubtful, it is hard to see why it should be done by way of awarding relief to the plaintiff without regard to the merits of his case. The defendant is an object of punishment, if at all, for a wrong done to the court, not to the plaintiff.

§ 559. **Complete Relief.**—The usual rule of equity to give complete relief, legal and equitable, in a matter of which it has jurisdiction to award any relief, is applied in cases of enjoining disturbance of easements, so that a plaintiff in addition to an injunction may be given damages also.⁹³

§ 560. **Parties.**—The parties who may enjoin disturbance of an easement are all those whose interest is such that it may be injured beyond the extent for which legal remedies will be adequate. Thus, it has been held that a tenant from year to year may procure an injunction;⁹⁴ and so may a tenant whose tenancy had but two years more to run.⁹⁵ But when at the time of the hearing the plaintiff's lease had, in one case seven,⁹⁶ in another, eight,⁹⁷ months to run, injunctions were refused, the shortness of the time in both cases being an important

township committee to lay tracks on a public highway, constructed its tracks on Sunday without procuring consent. The court on motion granted a temporary injunction against the use or further construction of the track. As this is clearly a case in which a prohibitory injunction against the laying of the track would have been granted, the court might very appropriately have gone further and ordered the track removed.

⁹³ *Downing v. Dinwiddie*, 132 Mo. 92, 33 S. W. 470, 575.

⁹⁴ *Simper v. Foley*, 2 Johns. & H. 555.

⁹⁵ *Robson v. Edwards*, [1893] L. R. 2 Ch. 146.

⁹⁶ *Brande v. Grace*, 154 Mass. 210, 31 N. E. 633.

⁹⁷ *Jacomb v. Knight*, 32 L. J. Ch., N. S., 600, 11 Week. Rep. 812,

8 L. T., N. S., 621.

element in making proper the application of the balance of injury doctrine.⁹⁸ It has also been held that one who had only an agreement to take a lease might have an injunction in order to protect his equitable interest.⁹⁹ And an owner of property which he did not occupy was granted an injunction against obstruction of light.¹⁰⁰ Under the same general principle, it is held that a railroad company has such an interest in its right of way as to be entitled to enjoin interference with it, as by the building of a bridge over it,¹⁰¹ or the laying of another track across it.¹⁰² The defendant who may be enjoined is the person who is himself responsible for the wrong. Under this rule the owner of the servient tenement was not enjoined because third parties interfered with the plaintiff's right of way.¹⁰³

⁹⁸ Compare with these cases the following language of Wood, V. C., in *Dent v. Auction Mart Co.*, L. R. 2 Eq. 238, 247, 248: "I may suggest a case in which the court would probably not interfere (not merely when the right is of short duration, for I have interfered in cases of very short duration with reference to the obstruction of light), but where the whole of the property is about to cease immediately—as, for instance, in the case of notice given under a Railway Act to take a house, when the house is about to be destroyed and razed to the ground in two or three days' time. That is one of the cases in which damages might be given at law, and yet this court would not think it right to interfere."

⁹⁹ *Gale v. Abbot*, 8 Jur., N. S., 987.

¹⁰⁰ *Wilson v. Townsend*, 1 Drew. & S. 324.

¹⁰¹ *Northern etc. Co. v. Harrisburg etc. Co.*, 177 Pa. St. 142, 35 Atl. 624, 34 L. R. A. 572.

¹⁰² *Atlanta Ry. etc. Co. v. Atlanta Rap. Transit Co.*, 113 Ga. 481, 39 S. E. 12.

¹⁰³ *Mulvaney v. Kennedy*, 26 Pa. St. 44. See for cases in actions at law, *Gale on Easements* (7th ed.), p. 557.

CHAPTER XXVI.

INJUNCTIONS FOR THE PROTECTION OF WATER RIGHTS.

ANALYSIS.

§ 561. Pollution.

§ 562. Diversion or obstruction

§ 563. Percolating waters.

§ 564. Navigation.

§ 561. Pollution.—Injunctions to protect water rights are very common illustrations of equitable intervention because of the inadequacy of legal remedies. The principles governing the equitable jurisdiction are essentially the same as in nuisance, the legal wrong being in the same class of torts. For a more detailed statement of these principles, therefore, reference should be made to the preceding chapter;¹ herein are simply stated the more general rules as illustrated in the cases on water rights. Pollution of running waters is a matter of frequent injunction.² The grounds of the jurisdiction are to prevent multiplicity of suits because of a continuing or recurring wrong,³ or to prevent irreparable injury,⁴

¹ See *ante*, chapter XXIV.

² *Fuller v. Swan etc. Co.*, 12 Colo. 12, 19 Pac. 836; *Dwight v. Village of Hayes*, 150 Ill. 273, 41 Am. St. Rep. 367, 37 N. E. 218; *Barton v. Union Cattle Co.*, 28 Neb. 350, 26 Am. St. Rep. 350; *Holsman v. Boiling Spring etc. Co.*, 14 N. J. Eq. 335; *Winchell v. Waukesha*, 110 Wis. 101, 84 Am. St. Rep. 902, 85 N. W. 668; *Townsend v. Bell*, 42 N. Y. St. Rep. 229, 17 N. Y. Supp. 210; *Goldsmid v. Tunbridge etc. Commrs.*, L. R. 1 Ch. App. 349, L. R. 1 Eq. 161; *Holt v. Corp. of Rochdale*, L. R. 10 Eq. 354; *Chapman v. City of Rochester*, 110 N. Y. 273, 6 Am. St. Rep. 366, 18 N. E. 88, 1 L. R. A. 296; *Doremus v. Mayor etc. Paterson* (N. J. Ch.), 55 Atl. 304, 57 Atl. 548; *City of Kewanee v. Otley*, 204 Ill. 402, 68 N. E. 388.

³ *Clowes v. Staffordshire etc. Co.*, L. R. 8 Ch. App. 125.

⁴ *Grey, Attorney-General, v. Mayor etc. Paterson*, 58 N. J. Eq. 1, 42 Atl. 749.

or the fact that the damages are not susceptible of estimation, and hence a verdict would be in the nature of conjecture.⁵ It is usually held, too, that it is a taking of property, and hence cannot be authorized by statute except by way of eminent domain with proper provision for making compensation;⁶ and even then it would not be constitutional if the taking is for a private purpose,⁷ and equity may enjoin for these reasons. If the pollution is only temporary and occasional, it will not be enjoined.⁸ It is the general doctrine that, since riparian owners have the right to have flowing water come to them in its natural purity, and so may bring repeated actions at law for pollution, even though it causes no damage, therefore equity will enjoin such pollution, regardless of the question of damage, in order to prevent multiplicity of suits.⁹ If the nuisance is a public one, a private plaintiff can procure an injunction only upon showing special damage to himself.¹⁰ It is no defense

⁵ *Lockwood Co. v. Lawrence*, 77 Me. 297, 52 Am. Rep. 763.

⁶ *Platt v. City of Waterbury*, 72 Conn. 531, 77 Am. St. Rep. 335, 45 Atl. 154, 48 L. R. A. 691; *Grey, Attorney-General, v. Mayor, etc. Paterson*, 60 N. J. Eq. 385, 83 Am. St. Rep. 642, 45 Atl. 995; *contra*, *City of Valparaiso v. Hagen*, 153 Ind. 337, 74 Am. St. Rep. 305, 54 N. E. 1062, 48 L. R. A. 707.

⁷ *Sterling Iron etc. Co. v. Sparks Mfg. Co.*, 55 N. J. Eq. 824, 41 Atl. 1117; affirming *Beach v. Sterling etc. Co.*, 54 N. J. Eq. 65, 33 Atl. 286. But the legislature may grant the right to pollute tidal waters, since they belong to the public: *Mayor etc. Newark v. Sayre*, 60 N. J. Eq. 361, 45 Atl. 985, 48 L. R. A. 722, reversing 58 N. J. Eq. 136, 42 Atl. 1068.

⁸ *Peterson v. City of Santa Rosa*, 119 Cal. 387, 51 Pac. 557.

⁹ *Townsend v. Bell*, 42 App. Div. 409, 59 N. Y. Supp. 203, affirming 62 Hun, 306, 17 N. Y. Supp. 210; *Mann v. Willey*, 51 App. Div. 169, 64 N. Y. Supp. 589, affirmed in 168 N. Y. 664, 61 N. E. 1131; *Crossley v. Lightower*, L. R. 2 Ch. App. 478; *Pennington v. Brinsop etc. Co.*, L. R. 5 Ch. D. 769; *Young & Co. v. Bankier etc. Co.*, [1893] L. R. App. Cas. 691. But see *Wood v. Sutcliffe*, 2 Sim., N. S., 163.

¹⁰ *Greene v. Nunnemacher*, 36 Wis. 50.

to a bill against one for pollution of a stream that others are also polluting it.¹¹ Nor, by the better authority, is it a defense that granting the injunction will harm the defendant more than refusing it will harm the plaintiff.¹² Having taken jurisdiction to enjoin the continuance of pollution, equity also awards damages on the principle of giving complete relief.¹³

§ 562. **Diversion or Obstruction.**—"It is a clear principle in law, that the owner of land is entitled to the use of a stream of water which has been accustomed, from time immemorial, to flow through it, and the law gives him ample remedy for the violation of this right. To obstruct or divert a watercourse is a private nuisance."¹⁴ The remedy by injunction which equity affords is very frequently sought. "And the foundation of that jurisdiction," said the court in the same case quoted above, "is the necessity of a preventive remedy when great and immediate mischief, or material injury would arise to the comfort and useful enjoyment of property. The interference rests on the principle of a clear and certain right to the enjoyment of the subject in question, and an injurious interruption of that right which upon just and equitable grounds ought to be prevented." If this oft-quoted language means anything

¹¹ *Butler v. Village of White Plains*, 59 App. Div. 30, 69 N. Y. Supp. 193; *Sammons v. City of Gloversville*, 34 Misc. Rep. 459, 70 N. Y. Supp. 284; *Weston etc. Co. v. Pope*, 155 Ind. 394, 57 N. E. 719, 56 L. R. A. 899; *Strobel v. Kerr Salt Co.*, 164 N. Y. 303, 79 Am. St. Rep. 643, 58 N. E. 142, 51 L. R. A. 637.

¹² *Suffolk etc. Co. v. San Miguel etc. Co.*, 9 Colo. App. 407, 48 Pac. 828. But see *Grey, Attorney-General, v. Mayor etc. of Paterson*, 60 N. J. Eq. 385, 83 Am. St. Rep. 642, 45 Atl. 995.

¹³ *Seaman v. Lee*, 10 Hun, 607; *Rothery v. New York etc. Co.*, 24 Hun, 172; *Davis v. Lambertson*, 56 Barb. 480; *Snow v. Williams*, 16 Hun, 468.

¹⁴ Per Chancellor Kent in *Gardner v. Trustees etc. Newburgh*, 2 Johns. Ch. 162, 7 Am. Dec. 526.

more than that diversion of water will be enjoined when it is irreparable, or when, from its continuance, it would involve repeated suits at law to furnish redress to the plaintiff, and that generally the case will fall within one or both of these familiar heads of jurisdiction, it is believed the authorities do not support it; diversion of water is not *per se* a thing that will be enjoined.¹⁵ It may, however, be enjoined without a showing of damage; but this results from the fact that at law the plaintiff may maintain an action without proof of damage, on account of the invasion of his right to have the water flow in its accustomed channel, and equity will enjoin under the same circumstances in order to avoid repeated litigation.¹⁶ Another ground of jurisdiction may be that, though the injury is not irreparable in the sense of being one of such peculiar character that money will not pay for it, yet the amount of damage is incapable of ascertainment in amount, and equity will not leave the plaintiff to a verdict at law which "cannot be measured by any certain pecuniary standard," but must

15 In *Westbrook Mfg. Co. v. Warren*, 77 Me. 437, 1 Atl. 246, an injunction was refused because the diversion complained of was only temporary. See, also, *Tuolumne Water Co. v. Chapman*, 8 Cal. 392; *Wright v. Moore*, 38 Ala. 593, 82 Am. Dec. 731.

16 *Moore v. Clear Lake Water-works*, 68 Cal. 46, 8 Pac. 816; *Gould v. Eaton*, 117 Cal. 539, 49 Pac. 577, 38 L. R. A. 181; *Southern Cal. Inv. Co. v. Wilshire*, 144 Cal. 68, 77 Pac. 767; *Burden v. Stein*, 27 Ala. 104, 62 Am. Dec. 758; *Union etc. Co. v. Danberg*, 81 Fed. 73; *Duesler v. City of Johnstown*, 24 App. Div. 608, 48 N. Y. Supp. 683; *Penrhyn etc. Co. v. Granville etc. Co.*, 84 App. Div. 92, 82 N. Y. Supp. 547; *Rigney v. Tacoma etc. Co.*, 9 Wash. 576, 38 Pac. 147, 26 L. R. A. 925; *Amsterdam etc. Co. v. Dean*, 13 App. Div. 42, 43 N. Y. Supp. 29; *Lehigh etc. Co. v. Scranton etc. Co.*, 6 Pa. Dist. Rep. 291; *contra*, *New Haven etc. Co. v. Borough of Wallingford*, 72 Conn. 293, 44 Atl. 235; *Watson v. New Milford etc. Co.*, 71 Conn. 442, 42 Atl. 265; *Fifield v. Spring Valley Water-works*, 130 Cal. 552, 62 Pac. 1054; *Jones v. Conn.*, 39 Or. 30, 87 Am. St. Rep. 634, 64 Pac. 855, 65 Pac. 368, 54 L. R. A. 630.

be based on conjecture;¹⁷ such a legal remedy is not adequate. A diversion which is only threatened, and not yet existing, if imminent and likely to cause irreparable injury, may be enjoined.¹⁸ A diversion of water no greater in quantity than an amount which the defendant introduces into the stream above, will not be enjoined, as the plaintiff has no property in the water itself but only in its flowing, and this may be the same though the water is not the identical fluid naturally in the stream.¹⁹ In jurisdictions in which prior appropriators' rights are recognized at law, they will also be protected in equity.²⁰ It is held that in determining the propriety of an injunction the balance of injury between the plaintiff and the defendant will not be considered.²¹ In addition to an injunction, equity will also give damages for past diversion.²² If the defendant is a municipality or other body having the right of eminent domain, the decree may be so framed as to

¹⁷ *Heilbron v. Fowler etc. Co.*, 75 Cal. 426, 7 Am. St. Rep. 183, 17 Pac. 535; *Kimberley etc. Co. v. Hewitt*, 75 Wis. 371, 44 N. W. 303. See, also, *California Pastoral & A. Co. v. Enterprise C. & L. Co.*, 127 Fed. 741.

¹⁸ *Kimberley etc. Co. v. Hewitt*, 75 Wis. 371, 44 N. W. 303.

¹⁹ *Society etc. Manfs. v. Morris etc. Co.*, 1 N. J. Eq. (Saxt.) 157, 21 Am. Dec. 41; *Butte Canal Co. v. Vaughan*, 11 Cal. 143, 70 Am. Dec. 769.

²⁰ *Butte Canal Co. v. Vaughan*, 11 Cal. 143, 70 Am. Dec. 769; *Ophir Min. Co. v. Carpenter*, 4 Nev. 534, 97 Am. Dec. 550; *Atchison v. Peterson*, 20 Wall. 507, 22 L. ed. 414; *Basey v. Gallagher*, 20 Wall. 670, 22 L. ed. 452; *Saint v. Guerrerio*, 17 Colo. 448, 31 Am. St. Rep. 320, 30 Pac. 335; *Moe v. Harger (Idaho)*, 77 Pac. 645.

²¹ *Pine v. Mayor etc. N. Y.*, 103 Fed. 337; *Deusler v. City of Johnstown*, 24 App. Div. 608, 48 N. Y. Supp. 683; *Smith v. Rochester*, 38 Hun, 612, affirmed in 104 N. Y. 674; *Acquaackanonk etc. Co. v. Watson*, 29 N. J. Eq. 366; *Higgins v. Flemington etc. Co.*, 36 N. J. Eq. 538; *Harper etc. Co. v. Mountain etc. Co.*, 65 N. J. Eq. 479, 56 Atl. 297; *Corning v. Troy etc. Factory*, 40 N. Y. 191, 34 Barb. 485, 39 Barb. 311, 6 How. Pr. 89.

²² *Roberts v. Vest*, 126 Ala. 355, 28 South. 412.

allow for the making of compensation instead of an unconditional injunction.²³ Riparian owners on non-navigable lakes have rights in the water such that they may enjoin draining or other diversion of it.²⁴ Cases of injunction against diversion of water other than those already cited are collected in the note below.²⁵ Obstruction of running water is a wrong of exactly the same character as diversion, being an interference with the riparian owner's right to have the stream in its quantity and manner, and as a subject of injunction, is governed by the same rules.²⁶

§ 563. **Percolating Waters.**—As a result of the legal rule that one has no rights in percolating waters as such, it follows that equity will not interfere with their

²³ *Lonsdale v. City of Woonsocket*, 25 R. I. 428, 56 Atl. 448.

²⁴ *Webster v. Harris*, 111 Tenn. 668, 69 S. W. 782, 59 L. R. A. 324, citing 1 Pom. Eq. Jur., § 95.

²⁵ *Pugh v. Golden etc. Co.*, L. R. 15 Ch. D. 330; *Oregon etc. Co. v. Allen etc. Co.*, 41 Or. 209, 93 Am. St. Rep. 701, 69 Pac. 455; *Rupley v. Welch*, 23 Cal. 452; *Ferrea v. Knife*, 28 Cal. 340, 87 Am. Dec. 123; *Meng v. Coffey* (Neb.), 93 N. W. 713; *Britt v. Reed*, 42 Or. 76, 70 Pac. 1029; *Stoner v. Mau*, 11 Wyo. 366, 72 Pac. 193, 73 Pac. 548; *Kay v. Kirk*, 76 Md. 41, 35 Am. St. Rep. 408, 24 Atl. 326; *Raymond v. Winsette*, 12 Mont. 551, 33 Am. St. Rep. 604, 31 Pac. 537; *Rodgers v. Pitt*, 129 Fed. 932; *Miller & Lux v. Enterprise etc. Co.*, 142 Cal. 208, 100 Am. St. Rep. 115, 75 Pac. 770; *Miller & Lux v. Rickey*, 127 Fed. 573; *Buckers etc. Co. v. Farmers' etc. Co.*, 31 Colo. 62, 72 Pac. 49. Abstraction of water: *Arthur v. Case*, 1 Paige, 447; *Mostyn v. Atherton*, [1899] 2 Ch. 360; *Cline v. Stock* (Neb.), 98 N. W. 454. As to the effect of acquiescence, see *Montecito Val. Water Co. v. City of Santa Barbara*, 144 Cal. 578, 77 Pac. 1113.

²⁶ *Amsterdam etc. Co. v. Dean*, 162 N. Y. 278, 56 N. E. 757, affirming 13 App. Div. 42, 43 N. Y. Supp. 29; *City of Janesville v. Carpenter*, 77 Wis. 288, 20 Am. St. Rep. 123, 46 N. W. 128, 8 L. R. A. 808; *McKee v. Delaware etc. Co.*, 125 N. Y. 353, 21 Am. St. Rep. 740, 26 N. E. 305; *Belknap v. Trimble*, 6 Paige, 577; *Koopman v. Blodgett*, 70 Mich. 610, 14 Am. St. Rep. 527, 38 N. W. 649; *Lone Tree Ditch Co. v. Rapid City etc. Co.* (S. D.), 93 N. W. 650; *Union Light etc. Co. v. Lichty*, 42 Or. 563, 71 Pac. 1044. The same rule applies to the obstruction of a drainage ditch: *Robertson v. Lewie* (Conn.), 59 Atl. 409.

diversion or obstruction, even when the effect is to cause a spring or well of the plaintiff to dry up or diminish in flow.²⁷ But it has been held that one can thus take percolating waters from his neighbor only for use in connection with his land; hence taking it simply to waste it²⁸ or to sell it to a city for municipal purposes²⁹ has been enjoined. Neither does the doctrine concerning percolating waters apply to subterranean waters flowing in a defined channel, and interference with their flow may be enjoined by a person injured, as a prior appropriator in the jurisdictions where rights of appropriation are recognized,³⁰ or a person lower down on the channel.³¹ Nor can a person by means of percolation interfere with the flow of a stream; this is no less a diversion than if he took the water directly from the stream by a ditch or other channel, and will be restrained in equity.³² The right to interfere with per-

²⁷ Trustees etc. *Delhi v. Youmans*, 50 Barb. 316, 45 N. Y. 362, 6 Am. Rep. 100; *Ellis v. Duncan*, 21 Barb. 230. See *Trinidad etc. Co. v. Ambard*, 68 L. J. P. C. 114, [1899] App. Cas. 594, 81 L. T., N. S., 132, 48 Week. Rep. 116.

²⁸ *Stillwater Water Co. v. Farmer*, 89 Minn. 58, 99 Am. St. Rep. 541, 93 N. W. 907, 60 L. R. A. 875; *Barclay v. Abraham*, 121 Iowa, 619, 100 Am. St. Rep. 365, 96 N. W. 1080.

²⁹ *Forbell v. City of New York*, 164 N. Y. 522, 79 Am. St. Rep. 666, 58 N. E. 644, 51 L. R. A. 695. To the effect that in California percolating water cannot be taken for purposes of sale and use on other land, and that an injunction may issue, see the important case of *Katz v. Walkinshaw*, 141 Cal. 116, 99 Am. St. Rep. 35, 70 Pac. 663, 74 Pac. 766, 64 L. R. A. 236.

³⁰ *Cole etc. Co. v. Virginia Co.*, 1 Saw. 470, 686, Fed. Cas. No. 2989; *Cross v. Kitts*, 69 Cal. 217, 10 Pac. 409, 58 Am. Rep. 558. See, also, *Vineland etc. Dist. v. Azusa etc. Co.*, 26 Cal. 486, 58 Pac. 1057, 46 L. R. A. 820.

³¹ Trustees etc. *Delhi v. Youmans*, 50 Barb. 316, 45 N. Y. 362, 6 Am. Rep. 100; *Burroughs v. Satterlee*, 67 Iowa, 396, 56 Am. Rep. 350, 25 N. W. 808; *Keeney v. Carillo*, 2 N. Mex. 480; *Taylor v. Welch*, 6 Or. 198; *Saint Amand v. Lehman*, 120 Ga. 253, 47 S. E. 949.

³² *Grand Junction etc. Co. v. Shugar*, L. R. 6 Ch. D. 483; *Vineland etc. Dist. v. Azusa etc. Co.*, 126 Cal. 486, 58 Pac. 1057, 46 L. R. A.

colating water is confined to diverting, obstructing, or abstracting it. If one pollutes it and in this condition it injures another, as by flowing into his well, it is a nuisance and as such may be enjoined;³³ and the same thing is true if one causes water to percolate into the land of another and cause injury.³⁴

§ 564. **Obstructions to Navigation.**—Obstructions to navigation of navigable streams are, of course, primarily public nuisances and as such subject to indictment or restraint at suit of the proper public officer. If the obstruction is in tidal or other waters in which the state is the actual owner of the soil, it may be one which causes no injury to anyone. In such case it is not a nuisance but simply a purpresture, which is an intrusion upon the proprietary rights of the state, or crown, which may be remedied by an information of intrusion at common law or an information in equity at suit of the attorney-general, and, in the latter event, it is said that the court of equity may refuse an injunction if the purpresture does no damage to anyone.³⁵ If, however, the obstruction actually interferes with navigation, it is a nuisance as well as a purpresture, and in this aspect it is subject to the usual rules concerning public nuisances. It may be enjoined at suit of the attorney-general or other proper public officer on behalf

820; *Proprietors of Mills v. Braintree etc. Co.*, 149 Mass. 478, 21 N. E. 761, 4 L. R. A. 272.

³³ *Ballard v. Tomlinson*, L. R. 29 Ch. D. 115.

³⁴ *Parker v. Larsen*, 86 Cal. 236, 21 Am. St. Rep. 30, 24 Pac. 989.

³⁵ See *Wood on Nuisances* (3d ed.), pp. 107-125; *Gould on Waters* (3d ed.), §§ 21, 93; *People v. Vanderbilt*, 28 N. Y. 396, 84 Am. Dec. 351, affirming 38 Barb. 282; *Attorney-General v. Eau Claire*, 37 Wis. 400; *Revell v. People*, 177 Ill. 468, 69 Am. St. Rep. 257, 52 N. E. 1052, 43 L. R. A. 790; *People v. Mould*, 37 App. Div. 35, 55 N. Y. Supp. 453, reversing 24 Misc. Rep. 287, 52 N. Y. Supp. 1032.

of the state, if the legal remedy is inadequate.³⁶ If the question whether a nuisance exists or not is doubtful, a suit at law to establish the fact is required.³⁷ Such nuisances may not only be enjoined by the proper public official, but also by a private individual who shows special damage to himself³⁸ and that his legal remedy is inadequate.³⁹

³⁶ *Georgetown v. Alexandria Canal Co.*, 12 Pet. 91, 9 L. ed. 1012; *Attorney-General v. Jamaica Pond Co.*, 133 Mass. 361; *Pennsylvania v. Wheeling etc. Co.*, 13 How. 518, 14 L. ed. 249; *People v. Gold etc. Co.*, 66 Cal. 138, 56 Am. Rep. 80.

³⁷ *Earl of Ripon v. Hobart*, 3 Mylne & K. 169; *Crowder v. Tinkler*, 19 Ves. 617.

³⁸ *Pascagoula etc. Co. v. Dixon*, 77 Miss. 587, 78 Am. St. Rep. 537, 20 South. 724; *Morris v. Graham*, 16 Wash. 343, 58 Am. St. Rep. 33, 47 Pac. 752; *Mayor etc. N. Y. v. Baumberger*, 7 Rob. (N. Y.) 219; *Cherry Point etc. Co. v. Nelson*, 25 Wash. 558, 66 Pac. 55; *Esson v. Wattier*, 25 Or. 7, 34 Pac. 756; *Carvalho v. Brooklyn etc. Co.*, 56 App. Div. 522, 67 N. Y. Supp. 539.

³⁹ *Harlan etc. Co. v. Paschall*, 5 Del. Ch. 435; *Walker v. Shepardson*, 2 Wis. 384, 60 Am. Dec. 423.

CHAPTER XXVII.

INJUNCTIONS TO PROTECT PATENTS; COPYRIGHTS AND LITERARY PROPERTY; TRADE-MARKS AND TRADE-NAMES; EXCLUSIVE FRANCHISES.

ANALYSIS.

- §§ 565-573. Patents.
 - § 565. In general.
 - § 566. Requisites of bill.
 - § 567. Magnitude of injury is immaterial.
 - § 568. Incidental relief—Accounting—Damages.
 - § 569. Retention of bill after failure of right to injunctive relief.
 - § 570. Grounds for denial of relief.
 - § 571. Abandonment of infringement.
 - § 572. Laches.
 - § 573. Preliminary injunctions.
- §§ 574-576. Copyrights.
 - § 575. Same; preliminary injunctions.
 - § 576. Analogous rights; literary property.
- §§ 577-582. Trade-marks, etc.
 - § 578. Unfair competition.
 - § 579. Same—Continued.
 - § 580. Trade-names.
 - § 581. Corporate names.
 - § 582. Application of "clean hands" maxim.
- §§ 583-584. Exclusive franchises.
 - § 584. Same—Continued.

§ 565. Patents; In General.—The jurisdiction of equity to restrain infringements of patents is well settled. "From the nature of the right and of the wrong,—the violation being a continuous act,—the legal remedy is necessarily inadequate. The ordinary form of relief is an accounting of profits and an injunction in equity; indeed, the action at law is seldom resorted to, except for the purpose of establishing the validity of the patent or copyright by the verdict of a jury when it is really

contested. Under the constitution of the United States, the cognizance of suits for the infringement of these rights belongs exclusively to the federal courts."¹

As in all cases coming within the jurisdiction of law or equity, the complainant must show a right in himself and a violation thereof by defendant. To establish his right, he must prove two distinct elements, viz.: (1) that he is the legal or equitable owner of a patent right, and (2) that the patent is valid. The violation of the right is the infringement of the patent.

§ 566. *Requisites of Bill.*—It is sometimes stated that a bill for a permanent injunction against the infringement of a patent must show that the right has been established at law or that it has long been acquiesced in by the public;² but the better rule seems to be that these allegations are not essential. A court of equity will try the validity of the patent without the intervention of a jury.³ The reason given for the exercise of this jurisdiction is that a verdict of a jury in a case so intricate as one involving the validity of a patent is generally far from satisfactory.⁴

¹ Pom. Eq. Jur., § 1352, citing *Hogg v. Kirby*, 8 Ves. 215, 223; *Nichol v. Stockdale*, 3 Swanst. 687; *Bacon v. Jones*, 4 Mylne & C. 433, 436; *Saunders v. Smith*, 3 Mylne & C. 711, 728; *Martin v. Wright*, 6 Sim. 297; *Curtis on Patent and Copyrights*; *Webster's Patent Cases*.

² *Germain v. Wilgus*, 67 Fed. 597, 29 U. S. App. 564, 14 C. C. A. 561.

³ *Wirt v. Hicks*, 46 Fed. 71; *Ames, Cas. in Eq. Jur.* 626; *Wyckoff v. Wagner Typewriter Co.*, 88 Fed. 515; *Sanders v. Logan*, 2 Fish. Pat. Cas. 167, Fed. Cas. No. 12,295.

⁴ Referring to the rule first laid down above, *Lacombe, Cir. J.*, in *Wyckoff v. Wagner Typewriter Co.*, 88 Fed. 515, said: "The rule thus laid down would seem to introduce a most cumbersome, dilatory, and unsatisfactory practice. In cases where infringements commenced as soon as the patent was published to the world, it would be impossible for the patentee to show long-continued acquiescence by the public, and he could obtain no relief against infringements until after he

§ 567. **Magnitude of Injury is Immaterial.**—The right to a permanent injunction does not depend in any degree upon the magnitude of the injury which the plaintiff has suffered.⁵ He has an exclusive right which he is entitled to have protected. A mere failure on the plaintiff's part to use the patent and a refusal to allow others to use it on reasonable terms, are not sufficient to warrant refusal of injunctive relief.⁶

§ 568. **Incidental Relief—Accounting—Damages.**—It is a settled principle of equity that where jurisdiction is taken for one purpose it will be retained in order to award full relief. Accordingly, equity, after granting a permanent injunction against the infringement of a

had secured a verdict from a jury sustaining the validity of his patent. . . . When one remembers the careful study of intricate machinery, the manipulation of models, the reading and re-reading of technical evidence, the elaborate comparison of documents couched in language which certainly is not that of common speech, the close, hard thinking, sometimes prolonged for weeks, which, in the cases of a complicated patent, has to be gone through with, before a judge, however long his experience with such causes, is able to reach a conclusion on the issues of fact, which, even if erroneous, presents at least the appearance of a logical train of reasoning in its support, it seems safe to say, *a priori*, that the decision of such questions by an ordinary jury, imprisoned for a few hours, with naught but their vague recollections of the evidence, would be a lottery. . . . For these reasons this court is averse to rendering a decision which would introduce such a practice into this circuit, unless constrained to do so by controlling authority."

⁵ *Wirt v. Hicks*, 46 Fed. 71, Ames, Cas. in Eq. Jur. 626; *Colgate v. International Ocean Tel. Co.*, 17 Blatchf. 308, Fed. Cas. No. 2993 ("The right of the plaintiff to use his patented invention where the defendant is using it, is exclusive as against the defendant, although the right of the defendant to lay and maintain a submarine telegraphic cable between Florida and Cuba may be exclusive as against the plaintiff").

⁶ *Campbell Mfg. v. Manhattan Ry. Co.*, 49 Fed. 930, Ames, Cas. in Eq. Jur. 639. A contrary view is based upon a *dictum* by Judge Blodgett in *Hoe v. Knap*, 27 Fed. 204, but it seems clearly unsound.

patent, will retain the bill to decree an account of profits and sometimes to award damages. The distinction between profits in equity and damages must be carefully noted. "Profits are the gains or savings made by the wrong-doer by the invasion of the complainant's property right in his patent. They are the direct pecuniary benefits received, and are capable of definite measurement."⁷ "If an infringer of a patent has realized no profit from the use of the invention, he cannot be called upon to respond for profits."⁸ Originally, damages could not be awarded in an equitable action to restrain infringement;⁹ but this rule has been changed by statute. "Gains and profits are still the proper measure of damages in equity suits, except in cases where the injury sustained by the infringement is plainly greater than the aggregate of what was made by the respondent; in which event the provision is, that the complainant 'shall be entitled to recover, in addition to the profits to be accounted for by the respondent, the damages he has sustained thereby.'"¹⁰ A bill in equity for a naked account of profits and damages against an infringer of a patent, cannot be sustained. "Such relief is ordinarily incidental to some other equity, the

⁷ *Head v. Porter*, 70 Fed. 498, Ames, Cas. in Eq. Jur. 644.

⁸ *City of Elizabeth v. American Nicholson Pavement Co.*, 97 U. S. 126, 24 L. ed. 1000; *Head v. Porter*, 70 Fed. 498, Ames, Cas. in Eq. Jur. 644.

⁹ *City of Elizabeth v. American Nicholson Pavement Co.*, 97 U. S. 126, 24 L. ed. 1000.

¹⁰ Act of July 8, 1870, 16 Stats. at L. 198; *Birdsall v. Coolidge*, 93 U. S. 64, 23 L. ed. 802 ("Examples of the kind may be mentioned, where the business of the infringer was so improvidently conducted that it did not yield any substantial profits, and cases where the products of the patented improvements were sold greatly below their just and market value, in order to compel the owner of the patent, his assignees and licensees, to abandon the manufacture of the patented product").

right to enforce which secures to the patentee his standing in court."¹¹

§ 569. **Retention of Bill After Failure of Right to Injunctive Relief.**—Where a bill in equity is brought upon a patent, and during the pendency of the suit the right to an injunction fails by reason of the expiration of the patent, the suit is not determined, but the court will proceed to administer the other relief sought.¹² It is

¹¹ *Root v. L. S. & M. S. Ry. Co.*, 105 U. S. 189, 26 L. ed. 975 (per Matthews, J.: "Our conclusion is . . . that the most general ground for equitable interposition is, to insure to the patentee the enjoyment of his specific right by an injunction against a continuance of the infringement; but, that grounds of equitable relief may arise, other than by way of injunction, as where the title of the complainant is equitable merely, or equitable interposition is necessary on account of the impediments which prevent a resort to remedies purely legal; and such an equity may arise out of and inhere in the nature of the account itself, springing from special and peculiar circumstances which disable the patentee from a recovery at law altogether, or render his remedy in a legal tribunal difficult, inadequate and incomplete; and as such cases cannot be defined more exactly, each must rest upon its own particular circumstances, as furnishing a clear and satisfactory ground of exception from the general rule"); *Hayward v. Andrews*, 106 U. S. 672, 1 Sup. Ct. 544, 27 L. ed. 271; *Vaughan v. Central Pac. R. Co.*, 4 Saw. 280, Fed. Cas. No. 16,897; *Lord v. Whitehead*, 24 Fed. 801; *Adams v. Bridgewater Iron Co.*, 26 Fed. 324; *Creamer v. Bowers*, 30 Fed. 185; *Germaine v. Wilgus*, 67 Fed. 597, 14 C. C. A. 561; *Russell v. Kern*, 69 Fed. 94, 16 C. C. A. 154.

¹² *Clark v. Wooster*, 119 U. S. 322, 7 Sup. Ct. 217, 30 L. ed. 392; *Beedle v. Bennett*, 122 U. S. 71, 7 Sup. Ct. 1090, 30 L. ed. 1074; *Consolidated Safety Valve Co. v. Crosby Steam Gauge and Valve Co.*, 113 U. S. 157, 5 Sup. Ct. 513, 28 L. ed. 939; *Blank v. Manufacturing Co.*, 3 Wall. Jr. 196, Fed. Cas. No. 1532; *Sickles v. Gloucester Mfg. Co.*, 4 Blatchf. 229, 1 Fish. Pat. Cas. 222, Fed. Cas. No. 12,841; *Imlay v. Norwich & W. R. Co.*, 4 Blatchf. 227, 1 Fish. Pat. Cas. 340, Fed. Cas. No. 7012; *Jordan v. Dobson*, 2 Abb. U. S. 398, 4 Fish. Pat. Cas. 232, Fed. Cas. No. 7519; *Dick v. Struthers*, 25 Fed. 103; *Adams v. Bridgewater Iron Co.*, 26 Fed. 324 (suit brought twenty-three days before patent expired); *Ross v. City of Fort Wayne*, 63 Fed. 466, 11 C. C. A. 288 (suit brought two and one-half months before expiration of patent); *Chinnoek v. Paterson, P. & S. Tel. Co.*, 112 Fed. 531, 50 C. C. A. 384.

sometimes held that the true test of jurisdiction "is whether the bill is filed in season to enable complainant, under the practice and rules of court, to move for and obtain an injunction before the expiration of the patent." Where the bill is filed at so late a date that not even a preliminary injunction can be obtained, the court may dismiss the suit.¹³ Where the right to injunctive relief fails by reason of the death of the defendant after the filing of the bill but before the decree, the court may retain the case to award an account of profits against the executors.¹⁴

§ 570. Grounds for Denial of Relief.—Occasionally, when there is an established license fee for the use of a patent, courts of equity refuse relief upon the ground that there is an adequate remedy at law.¹⁵ The courts

¹³ *Bragg Mfg. Co. v. City of Hartford*, 56 Fed. 292; *American Cable Ry. Co. v. Chicago City Ry. Co.*, 41 Fed. 522; *American Cable Ry. Co. v. Citizens' Ry. Co.*, 44 Fed. 484; *Russell v. Kern*, 69 Fed. 94, 16 C. C. A. 154. See, also, *Keyes v. Eureka Consol. Min. Co.*, 158 U. S. 150, 15 Sup. Ct. 772, 39 L. ed. 929.

¹⁴ *Kirk v. Du Bois*, 28 Fed. 460; *Hohorst v. Howard*, 37 Fed. 97; *Atterbury v. Gill*, 3 Ban. & A. 174, Fed. Cas. No. 638; *Smith v. Baker*, 1 Ban. & A. 117, Fed. Cas. No. 13,010; *Head v. Porter*, 70 Fed. 498.

¹⁵ The principle is illustrated by the case of *Smith v. Sands*, 24 Fed. 470. The defendant bought a single infringing machine, which was used in a sawmill for disposing of rubbish. It was not employed in the manufacture of any article or thing for market or for sale, and it was for the interest of complainants that all sawmills use their patented machines, provided they were paid the price of a license. The court said: "The extent of their injury for using a single machine infringing their patents is the royalty or a suitable license fee. When once they have been paid the price or value of a license, they have received the full measure of the 'actual damage' they suffer for any particular infringing machine used by another, and it is the full remedy they are entitled to, except a court may treble the actual damages if the circumstances justify it." These cases must be distinguished carefully from those in which there is a damaging and constantly increasing competition. It would seem that the principle is one which should be most sparingly applied, for the effect is to compel an inventor to sell his exclusive right.

argue that in such cases the real injury to the plaintiff does not consist in using the invention, but in not paying for it. It is to his interest that his device be widely adopted, and his profit comes from the sums paid for licenses. Frequently there is connected with these cases an element of hardship which appeals to the courts.¹⁶ The patented article may be a small part of a machine used by a large manufacturing establishment, and the effect of an injunction may be to close the concern and cause great loss. Under these circumstances, the courts are often led to deny injunctive relief. It would seem that some such case as this must arise in order to warrant the refusal of final relief on the ground of hardship.

§ 571. **Abandonment of Infringement.**—When it appears that prior to the commencement of suit defendant had wholly ceased to infringe and was not threatening and did not intend to infringe further, but had in good faith entirely and finally abandoned the manufacture and sale of the article, an injunction may be denied;¹⁷ but in such case, it is held, the defendant must

¹⁶ For cases involving the element of hardship, see *Sanders v. Logan*, 2 Fish. Pat. Cas. 167, Fed. Cas. No. 12,295 (invention of an improvement for machinery of gristmills; injunction would stop the mill and work a great hardship); *Hoe v. Boston Daily Advertiser Corp.*, 14 Fed. 914 (improvement to printing press). For miscellaneous instances of refusal of relief on the ground of hardship, see the following cases: *Dorsey Harvester Revolving-Rake Co. v. Marsh*, 6 Fish. Pat. Cas. 387, Fed. Cas. No. 4014; *Lowell Mfg. Co. v. Hartford Carpet Co.*, 2 Fish. Pat. Cas. 472, Fed. Cas. No. 8569; *McCrary v. Pennsylvania Canal Co.*, 5 Fed. 367. In the following cases relief was denied because it would work a hardship on the public: *Bliss v. Brooklyn*, 4 Fish. Pat. Cas. 596, Fed. Cas. No. 1544 (hose couplings used by the fire department of a city); *Ballard v. City of Pittsburgh*, 12 Fed. 783 (patent blocks used in city pavement; injunction refused after pavement laid).

¹⁷ *General Electric Co. v. New England Electric Co.*, 123 Fed.

set up in his answer that infringement is not further intended.¹⁸

§ 572. **Laches.**—"Unreasonable delay and the deceitful acts or silence of a patentee which induce an infringer to incur expenses or to become liable to losses and damages which he would not otherwise have suffered, may sometimes justly induce a court of equity to stay his suit for an infringement or for an accounting before the time fixed by the analogous statute of limitations has expired.¹⁹ But delay, unaccompanied by such deceitful acts or silence of the patentee, and by such facts and circumstances as practically amount to an equitable estoppel, will warrant no such action."²⁰

§ 573. **Preliminary Injunctions.**—The principles upon which preliminary injunctions issue are well settled. "The purpose of the interlocutory writ is not to conclude the question of right but to protect against material injury pending the litigation. In patent cases,

¹⁸ *Cayuta Wheel & Foundry Co. v. Kennedy Valve Mfg. Co.*, 127 Fed. 355, Ames, Cas. in Eq. Jur. 638.

¹⁹ See *Lane & Bodley Co. v. Locke*, 150 U. S. 193, 14 Sup. Ct. 78, 37 L. ed. 1049 (acquiescence in use by employers); *Keyes v. Eureka Consol. Min. Co.*, 158 U. S. 150, 15 Sup. Ct. 772, 39 L. ed. 929; *Woodmanse & Hewitt Mfg. Co. v. Williams*, 68 Fed. 489, 15 C. C. A. 520; *Richardson v. Osborne*, 82 Fed. 95 (acquiescence in open and notorious infringement for sixteen years); *Meyrowitz Mfg. Co. v. Eccleston*, 98 Fed. 437.

²⁰ *Ide v. Trorlicht*, 115 Fed. 137, 53 C. C. A. 341; *Menendez v. Holt*, 128 U. S. 514, 9 Sup. Ct. 143, 32 L. ed. 526 (delay of thirteen years); *McLean v. Fleming*, 96 U. S. 245, 24 L. ed. 828 (delay not a bar to injunction, although it may be to an account of profits); *Price v. Joliet Steel Co.*, 46 Fed. 107 (although delay may be sufficient to bar preliminary injunction and perhaps account, a final injunction may be awarded); *Brush Electric Co. v. Electric Imp. Co.*, 45 Fed. 241; *Taylor v. Sawyer Spindle Co.*, 75 Fed. 301, 22 C. C. A. 203 (delay of seven years); *Bragg Mfg. Co. v. City of Hartford*, 56 Fed. 292 (delay of eight years); *Kittle v. Hall*, 29 Fed. 508 (delay of seven years).

to warrant the writ, not only must the infringement be without reasonable doubt, but the rights of the patentee must be clear. Failing prior adjudication in favor of the validity of the patent, there must be shown such continued public acquiescence in the exclusive right asserted as raises a presumption of validity; a presumption not arising from the letters patent, unless accompanied by public acquiescence."²¹ Where the validity of a patent has been sustained by prior adjudication, the only question open on motion for a preliminary injunction is the question of infringement, the consideration of other defenses being postponed until final hearing.²² This rule is subject to exceptions, however. Where the new evidence is of such a character that if it had been introduced in the former case it probably

²¹ *Standard Elevator Co. v. Crane Elevator Co.*, 56 Fed. 718, 6 C. C. A. 100. See, also, *Wirt v. Hicks*, 46 Fed. 71; *Orr v. Littlefield*, 1 Wood. & M. 13, Fed. Cas. No. 10,590 (undisturbed possession); *Williams v. Breitling Metal-Ware Mfg. Co.*, 77 Fed. 285, 23 C. C. A. 171; *Palmer Pneumatic Tire Co. v. Newton Rubber Works*, 73 Fed. 218. Public acquiescence sufficient: *Stevens v. Keating*, 2 Phill. 333. It has been held that an interference suit between the same parties decided in plaintiff's favor by the patent office is sufficient: *Palmer Pneumatic Tire Co. v. Newton Rubber Works*, 73 Fed. 218 (*dictum*); *Peck v. Lindsay*, 2 Fed. 688; *Holliday v. Pickhardt*, 12 Fed. 147; *Smith v. Halkyard*, 16 Fed. 414.

²² *Edison Electric Light Co. v. Beacon Vacuum P. & E. Co.*, 54 Fed. 678; *Parker v. Brant*, 1 Fish. Pat. Cas. 58, Fed. Cas. No. 10,727; *Potter v. Fuller*, 2 Fish. Pat. Cas. 251, Fed. Cas. No. 11,327 (upon motion for preliminary injunction, prior adjudication would be overruled with great reluctance); *Robertson v. Hill*, 6 Fish. Pat. Cas. 465, Fed. Cas. No. 11,925; *Green v. French*, 4 Ban. & A. 169, Fed. Cas. No. 5757; *Mallory Mfg. Co. v. Hickok*, 20 Fed. 116; *Cary v. Lovell Mfg. Co.*, 24 Fed. 141; *Cary v. Domestic Spring Bed Co.*, 27 Fed. 299; *Seibert Cylinder Oil Cup Co. v. Michigan Lubricator Co.*, 34 Fed. 33; *Putnam v. Keystone Bottle Stopper Co.*, 38 Fed. 234; *Brush Electric Co. v. Accumulator Co.*, 50 Fed. 833; *New York Filter Mfg. Co. v. Jackson*, 91 Fed. 422; *New York Filter Mfg. Co. v. Loomis-Manning Filter Co.*, 91 Fed. 421; *Duff Mfg. Co. v. Norton*, 92 Fed. 921 (prior adjudication that plaintiff was entitled to a preliminary injunction may be sufficient); *Hatch Storage Battery Co. v. Ed-*

would have led to a different conclusion, the equity court may go behind the record and consider all the facts.²³ The burden is on the defendant to establish this, and every reasonable doubt must be resolved against him.²⁴ Again, where the prior litigation was the result of collusion, the judgment is not conclusive.²⁵

If the right of the plaintiff or the infringement by the defendant is doubtful, preliminary relief will, in general, be denied.²⁶ In some cases, however, a temporary injunction has been granted, although the right has been doubtful, upon the ground that the granting

ison Storage Battery Co., 100 Fed. 975, 41 C. C. A. 133; American Sulphite Pulp Co. v. Burgess Sulphite Fibre Co., 103 Fed. 975; Brill v. Peckham Mfg Co., 129 Fed. 139. A preliminary injunction will not be denied, when title has been established, merely because the patent has only a short time to run: Electric Storage Battery Co. v. Buffalo Elect. C. Co., 117 Fed. 314.

23 Edison Electric Light Co. v. Beacon Vacuum P. & E. Co., 54 Fed. 678; Parker v. Brant, 1 Fish. Pat. Cas. 58, Fed. Cas. No. 10,727 ("The considerations which would justify a judge, at this stage of an equity cause, in renewing the discussion of a patentee's title after solemn hearing and judgment at law, should be such as, if presented to his view after a trial at law, would have induced him to set aside the verdict"); Brill v. Peckham Mfg. Co., 129 Fed. 139. See, also, Lockwood v. Faber, 27 Fed. 63.

24 Edison Electric Light Co v. Beacon Vacuum P. & E. Co., 54 Fed. 678.

25 Prior adjudication not conclusive when rendered without contest: Western Electric Co. v. Anthracite Tel. Co., 100 Fed. 301; American Electrical Novelty Co. v. Newgold, 99 Fed. 567; Societe Anonyme Du Filtre etc. v. Allen, 84 Fed. 812; Wilson v. Consolidated Store-Service Co., 88 Fed. 286, 31 C. C. A. 533; Bowers Dredging Co. v. New York Dredging Co., 77 Fed. 980 (compromise decree); De Ver Warner v. Bassett, 7 Fed. 468, 19 Blatchf. 145 (decree by consent).

26 Plympton v. Malcolmson, L. R. 20 Eq. 37; Blakey v. National Mfg. Co., 95 Fed. 136, 37 C. C. A. 27; Sprague Electric Ry. & Motor Co. v. Nassau Electric R. Co., 95 Fed. 821, 37 C. C. A. 286; Geo. A. Macbeth Co. v. Lippincott Glass Co., 54 Fed. 167; Norton Door Check & Spring Co. v. Hall, 37 Fed. 691; Armat Moving Picture Co. v. Edison Mfg. Co., 125 Fed. 939, 60 C. C. A. 380; Newhall v. McCabe Hanger Mfg. Co., 125 Fed. 919, 60 C. C. A. 629; Marvel Co. v. Pearl,

of it would injure defendant less than the withholding it would injure complainant.²⁷ This same principle prevents relief in some instances where the right is not doubtful, when the injury to the defendant by a preliminary injunction will far outweigh any advantage to the complainant therefrom. In such cases the defendant is generally compelled to give a bond to keep an account of sales.²⁸

§ 574. Copyrights.—The principles governing the issuance of injunctions against the infringements of copyrights are similar to those relating to patents. A copyright gives an exclusive right which the owner is entitled to have protected by injunction.²⁹ It is not neces-

114 Fed. 946; Consolidated Rubber Tire Co. v. Finley Rubber Tire Co., 106 Fed. 175; Union Switch & Signal Co. v. Philadelphia & R. R. Co., 75 Fed. 1004; Consolidated Fastener Co. v. Columbian Fastener Co., 73 Fed. 828; Johnson v. Aldrich, 40 Fed. 675.

²⁷ Sargent v. Seagrave, 2 Curt. 553, Fed. Cas. No. 12,365 ("The court looks to the particular circumstances to see what degree of inconvenience would be occasioned to one party or the other, by granting or withholding the injunction"; injunction granted, although right doubtful); Irwin v. Dane, 4 Fish. Pat. Cas. 359, Fed. Cas. No. 7081.

²⁸ Potter v. Whitney, 1 Low. 87, 3 Fish. Pat. Cas. 77, Fed. Cas. No. 11,341; National Cash-Register Co. v. Navy Cash-Register Co., 99 Fed. 565 (patent would expire in four days); In re Chicago Sugar Ref. Co., 87 Fed. 750, 31 C. C. A. 221 (preliminary injunction is matter of discretion); Overweight etc. Co. v. Cahill & Hall Elevator Co., 86 Fed. 338; Westinghouse Air-Brake Co. v. Burton Stock Car Co., 77 Fed. 301, 23 C. C. A. 174; Southwestern Brush E. L. & P. Co. v. Louisiana Electric Light Co., 45 Fed. 893; Hurlburt v. Carter, 39 Fed. 802; Hoe v. Boston Daily Advertiser Corp., 14 Fed. 914.

²⁹ Fishel v. Lueckel, 53 Fed. 499; Reed v. Holliday, 19 Fed. 325; Black v. Allen, 56 Fed. 764. As to the scope of the injunction, see Social Register Assn. v. Murphy, 128 Fed. 117 ("As to those portions of the book where material of the plaintiff and of the defendant is so blended that a separation is impracticable, the injunction must be general. The injunction should not extend, however, to those distinct parts of the book which are not affected by the complainant's copyrights").

sary that any actual damage be shown.³⁰ "Where the infringement is otherwise established, the intention is immaterial." Therefore, an allegation of the defendants that they had no intention to infringe is not a defense.³¹ Where the right to an injunction is established, an account of profits may be awarded as incidental thereto.³² An author, however, who has pirated a large part of his work from others is not entitled to have his copyright protected.³³

§ 575. Same—Preliminary Injunctions.—In order that a preliminary injunction may issue to restrain the infringement of a copyright, both plaintiff's right and de-

³⁰ *Fishel v. Lueckel*, 53 Fed. 499; *Reed v. Holliday*, 19 Fed. 325; *Black v. Allen*, 56 Fed. 764.

³¹ *Fishel v. Lueckel*, 53 Fed. 499; *Reed v. Holliday*, 19 Fed. 325; nor is it a defense that defendants were not aware that matter copied was protected by copyright: *American Press Assn. v. Daily Story Pub. Co.*, 120 Fed. 766.

³² *Fishel v. Lueckel*, 53 Fed. 499; *Stevens v. Gladding*, 58 U. S. (17 How.) 447, 15 L. ed. 155; *Baily v. Taylor*, 1 Russ. & M. 73, Ames, Cases in Eq. Jur. 654. "In regard to the general question of the profits to be accounted for by the defendants, as to the volumes in question, the only proper rule to be adopted is to deduct from the selling price the actual and legitimate manufacturing cost. If the volume contains matter to which a copyright could not properly extend, incorporated with matter proper to be covered by a copyright, the two necessarily going together when the volume is sold, as a unit, and it being impossible to separate the profits on the one from the profits on the other, and the lawful matter being useless without the unlawful, it is the defendants who are responsible for having blended the lawful with the unlawful, and they must abide the consequences, on the same principle that he who has wrongfully produced a confusion of goods must alone suffer": *Callaghan v. Myers*, 128 U. S. 617, 9 Sup. Ct. 177, 32 L. ed. 547, per Blatchford, J. Damages, as distinct from profits, cannot be decreed in a copyright case: *Social Register Assn. v. Murphy*, 129 Fed. 148; *Chapman v. Ferry*, 12 Fed. 693.

³³ *Edward Thompson Co. v. American Law Book Co.*, 122 Fed. 923, 59 C. C. A. 148. Also, see this case for definition of what is fair use of an existing compilation; explained in *Colliery Engineer Co.*

defendant's infringement must be clear.³⁴ "It is proper for the court to consider the harm that would be done to the complainant by refusing such an order, in comparison with the damage that might be sustained by the defendant in consequence of granting the same. The ability of the defendant to respond to any damages that may be assessed on final hearing is also an important element; and in these respects there is no difference in the rule governing cases arising under patent and copyright laws and other equitable proceedings."³⁵

v. Ewald, 126 Fed. 843; *Dun v. International Mercantile Agency*, 127 Fed. 173.

³⁴ In the following cases the right and the infringement were sufficiently clear to warrant the issuance of preliminary injunctions: *Egbert v. Greenberg*, 100 Fed. 447; *Banks v. McDivitt*, 13 Blatchf. 163, Fed. Cas. No. 961; *Daly v. Palmer*, 6 Blatchf. 256, Fed. Cas. No. 3552; *Shook v. Rankin*, 3 Cent. L. J. 210, Fed. Cas. No. 12,805. In the following cases either the right or the infringement was so doubtful that preliminary relief was denied: *West Pub. Co. v. Lawyers' Co-op. Pub. Co.*, 53 Fed. 265 (alleged piracy of one hundred and sixty-three passages contained in plaintiff's law digest; preliminary injunction denied because to verify contention would require "a long, wearisome, and complicated comparison"); *American Trotting Register Assn. v. Gocher*, 70 Fed. 237 (doubt as to whether complainant had complied with the copyright law); *Worthington v. Batty*, 40 Fed. 479; *Scribner v. Stoddart*, 19 Am. Law Reg. 433, Fed. Cas. No. 12,561; *Hubbard v. Thompson*, 14 Fed. 689; *McNeill v. Williams*, 11 Jur. 345, Ames, Cas. in Eq. Jur., 652. In *Little v. Gould*, 2 Blatchf. 165, Fed. Cas. No. 8394, Conkling, D. J., said: "But it is for the express purpose of resolving doubts with respect to the rights and responsibilities of parties, that courts are instituted; and, even on a motion of this nature, it is not every kind or degree of doubt that will absolve a judge from the responsibility of deciding questions presented for his consideration, much less from the labor of investigation and reflection. It must, at least, be a serious doubt, which remains after the faithful application of his faculties to its solution." In this case, the court held that the mere novelty of a question of law is not sufficient to warrant the withholding of temporary relief.

³⁵ *Hanson v. Jaccard Jewelry Co.*, 32 Fed. 202, per Thayer, J. See also, *Scribner v. Stoddart*, 19 Am. Law Reg. 433, Fed. Cas. No. 12,561.

§ 576. Analogous Rights—Literary Property.—“In analogy to the protection of copyrights, a jurisdiction has become well established by modern decisions to restrain the invasion or piracy of literary property in the product of intellectual labor, which still remains in the form of manuscript, or which, if printed, has not been published, and over which, as a consequence, no statutory copyright has been obtained; and to restrain the invasion of a similar right which an artist has in his pictures and other original works of his creative art. This jurisdiction belongs to the state courts. It will be exercised to restrain the unauthorized publication of unpublished manuscript or printed matter in violation of the rights of the person entitled thereto;³⁶ the unauthorized publication, performance, representation on the stage, or other similar uses of dramatic compositions which have not been ‘published’ by the author or proprietor;³⁷ the unauthorized publication, delivery, or

³⁶ *Duke of Queensbury v. Shebbeare*, 2 Eden, 329; *Pope v. Curl*, 2 Atk. 342; *Southey v. Sherwood*, 2 Mer. 435; *Keene v. Wheatley*, 9 Am. Law Reg. 63, Fed. Cas. No. 7644; *Folsom v. Marsh*, 2 Story, 100, Fed. Cas. No. 4901; *Grigsby v. Breckinridge*, 2 Bush, 480, 92 Am. Dec. 509; *Bartlette v. Crittenden*, 5 McLean, 32, Fed. Cas. No. 1076. The same principle applies to reports as to public improvements, etc., compiled for the benefit of customers. Delivery of such reports to customers under agreement that they shall be kept private is not a publication: *F. W. Dodge & Co. v. Construction Information Co.*, 183 Mass. 62, 97 Am. St. Rep. 412, 66 N. E. 204. See, also, *National Tel. News Co. v. Western Union Tel. Co.*, 119 Fed. 294, 56 C. C. A. 198, 60 L. R. A. 805 (news, market quotations, etc.); *Illinois Commission Co. v. Cleveland Tel. Co.*, 119 Fed. 301, 56 C. C. A. 205; *Sullivan v. Postal Tel. Cable Co.*, 123 Fed. 411; as to the application of the “clean hands” maxim, where the plaintiff’s business is illegal, see 2 Pom. Eq. Jur., § 941, note (a).

³⁷ *Palmer v. De Witt*, 47 N. Y. 532, 7 Am. Rep. 480, 2 Sweeny, 530, 5 Abb. Pr., N. S., 130; *Boucicault v. Fox*, 5 Blatchf. 87, Fed. Cas. No. 1691; *Keene v. Wheatley*, 9 Am. Law Reg. 33, Fed. Cas. No. 7644. It has been held “that the literary proprietor of an unprinted play cannot, after making or sanctioning its representation before an indiscriminate audience, maintain an objection to any such literary

other like use of lectures which have been delivered by the author, but not otherwise published;³⁸ the unauthorized making, sale, or exhibition of copies of paintings, engravings, and other works of art, even though the originals may have been publicly exhibited;³⁹ and the unauthorized publication of private letters, whether on literary topics, or on matters of private business, friendship, or family."⁴⁰

or dramatic republication by others as they may be enabled, either directly or secondarily, to make from its having been retained in the memory of any of the audience": *Keene v. Kimball*, 16 Gray, 545, 77 Am. Dec. 426. But see *Crowe v. Aiken*, 4 Am. Law Rev. 450, Fed. Cas. No. 3441.

38 "Where persons are admitted, as pupils or otherwise, to hear public lectures, it is upon the implied confidence and contract that they will not use any means to injure or take away the exclusive right of the lecturer in his own lectures, whether that be to publication in print or oral delivery": *Tompkins v. Halleck*, 133 Mass. 32, 43 Am. Rep. 480. See, also, *Abernethy v. Hutchinson*, 1 Hall & T. 28, 40, 3 L. J. Ch. 209 (pupils may take notes for their own information, but may not publish them for profit); *Keene v. Kimball*, 16 Gray, 545, 17 Am. Dec. 426; *Bartlette v. Crittenden*, 5 McLean, 32, Fed. Cas. No. 1076.

39 *Prince Albert v. Strange*, 1 Macn. & G. 25, 1 Hall & T. 1, 2 De Gex & S. 652 (etching). In *Pollard v. Photographic Co.*, 40 Ch. D. 345, there was an extreme application of the doctrine. Mrs. Pollard, the plaintiff, was photographed by defendant, and she paid for likenesses taken from the negative. Defendant made other likenesses of plaintiff from the negative, and exhibited and sold one in the form of a Christmas card. Plaintiff was granted an injunction. North, J., said: "The customer who sits for the negative thus puts the power of reproducing the object in the hands of the photographer; and in my opinion the photographer who uses the negative to produce other copies for his own use, without authority, is abusing the power confidentially placed in his hands merely for the purpose of supplying the customer; and further, I hold that the bargain between the customer and photographer includes, by implication, an agreement that the prints taken from the negative are to be appropriated to the use of the customer only."

40 Pom. Eq. Jur., § 1353. This section of Pom. Eq. Jur. is cited to the effect that publication of private letters may be enjoined, in *Barrett v. Fish*, 72 Vt. 18, 82 Am. St. Rep. 914, 47 Atl. 174, 51 L. R. A. 754. "The restraint may be at the suit of the writer against the

Copyright

§ 577. Trade-marks.—“Somewhat akin to the protection of patent and copyrights is that which courts of equity give, by means of the injunction, to the peculiar species of right arising from the adoption and use of ‘trade-marks.’ Although some judicial opinions and some recent statutes speak of ‘property’ in trade-marks, or call the right to their exclusive use a kind of property, yet in strictness the remedy does not depend upon any true *property* acquired in these symbols and names, but upon the broad principle that a court of equity will not permit fraud to be practiced upon the public nor upon private individuals.⁴¹ It is well settled by modern decisions, that when a trade-mark has been duly acquired by a manufacturer or dealer, an injunction will be granted at his suit to restrain other persons from using it upon their goods, or from using such imitations of it as will tend to mislead and deceive the

person written to, or his assigns, or a stranger, or at the suit of the person written to, or his personal representatives against a stranger”: Pom. Eq. Jur., § 1353, note. In the following cases injunctions against the publication of letters were granted: Pope v. Curl, 2 Atk. 342 (letters of a literary man; suit against third party); Gee v. Pritchard, 2 Swanst. 402 (suit by writer against third party); Thompson v. Stanhope, Amb. 737 (suit by executor of writer against widow of the party who received the letters); Folsom v. Marsh, 2 Story, 100, Fed. Cas. No. 4901; Grigsby v. Breckinridge, 2 Bush, 480, 92 Am. Dec. 509. In a few cases it is held that injunction should be confined to the publication of letters possessing some literary value: Wetmore v. Scovell, 3 Edw. Ch. 515; Hoyt v. McKenzie, 3 Barb. Ch. 320; Lord & Lady Perceval v. Phipps, 2 Ves. & B. 19, 24. But these cases do not represent the general rule: Woolsey v. Judd, 4 Duer, 379. See, also, cases cited at beginning of note.

⁴¹ The ground of the remedy was stated in *Farina v. Silverlock*, 6 De Gex, M. & G. 214, 217: “This right cannot properly be described as a copyright; it is, in fact, a right which can be said to exist only, and can be tested only, by its violation; it is the right which any person designating his wares or commodities by a particular trade-mark, as it is called, has to prevent others from selling wares which are not his, marked with that trade-mark, in order to mislead the public, and so incidentally to injure the person who is the owner of the trade-mark.”

public.⁴² For a discussion of the numerous questions concerning the nature and validity of trade-marks, who may acquire them, how they may be acquired, what

⁴² In the following cases injunctive relief was granted: *Edelsten v. Edelsten*, 1 De Gex, J. & S. 185; *Hall v. Barrows*, 4 De Gex, J. & S. 150; *Moet v. Pickering*, L. R. 6 Ch. D. 770; *Hirst v. Denham*, L. R. 14 Eq. 542; *Radde v. Norman*, L. R. 14 Eq. 348; *Seixo v. Provezende*, L. R. 1 Ch. App. 192; *Collins Co. v. Cowen*, 3 Kay & J. 428; *Collins Co. v. Brown*, 3 Kay & J. 423; *Wotherspoon v. Currie*, L. R. 5 H. L. (Eng. & Ir. App. Cas.) 508; *Orr Ewing & Co. v. Johnston*, L. R. 13 Ch. Div. 434, 7 App. Cas. (H. L.) 219 (relief may be granted before any purchaser is actually misled); *Rogers v. Nowell*, 3 De Gex, M. & G. 614; *Upmann v. Elkan*, L. R. 7 Ch. App. 130, 12 Eq. 140 (injunction against forwarding agents); *Bourne v. Swan & Edgar, L'd.*, [1903] 1 Ch. 211, 223; *Walton v. Crowley*, 3 Blatchf. 440, Fed. Cas. No. 17,133; *Hostetter v. Vowinkle*, 1 Dill. 329, Fed. Cas. No. 6714; *Taylor v. Carpenter*, 3 Story, 458, Fed. Cas. No. 13,784; *Gannert v. Rupert*, 127 Fed. 962, 62 C. C. A. 594; *Delaware & Hudson Canal Co. v. Clark*, 80 U. S. 311, 20 L. ed. 581; *Woodward v. Lazar*, 21 Cal. 448, 82 Am. Dec. 751; *Derringer v. Plate*, 29 Cal. 292, 87 Am. Dec. 170; *Burke v. Cassin*, 45 Cal. 467, 13 Am. Rep. 204; *Bradley v. Norton*, 33 Conn. 157, 87 Am. Dec. 200; *Boardman v. Meriden Britannia Co.*, 35 Conn. 402, 95 Am. Dec. 270; *Hoxie v. Chaney*, 143 Mass. 592, 53 Am. Rep. 149, 10 N. E. 713; *Russia Cement Co. v. Le Page*, 147 Mass. 206, 9 Am. St. Rep. 685, 17 N. E. 304; *Filley v. Fassett*, 44 Mo. 168, 100 Am. Dec. 275; *Congress etc. Spring Co. v. High Rock etc. Co.*, 45 N. Y. 291, 6 Am. Rep. 82; *Taylor v. Carpenter*, 2 Sand. Ch. 603, 11 Paige, 292, 42 Am. Dec. 114; *Gillott v. Esterbrook*, 48 N. Y. 374, 8 Am. Rep. 553, 47 Barb. 455; *Godillot v. Harris*, 81 N. Y. 263; *Coats v. Holbrook*, 2 Sand. Ch. 583; *Gourand v. Trust*, 6 Thomp. & C. 133, 3 Hun, 627; *Selechow v. Baker*, 93 N. Y. 59, 45 Am. Rep. 169; *American Solid Leather Button Co. v. Anthony*, 15 R. I. 338, 2 Am. St. Rep. 898, 5 Atl. 626. See, also, *Ohio Baking Co. v. National Biscuit Co.*, 127 Fed. 116, 62 C. C. A. 116 (trade-mark registered under federal law protected in state as common-law trade-mark); *General Electric Co. v. Re-new Lamp Co.*, 121 Fed. 164 (injunction against selling reconstructed electric lamps bearing plaintiff's trade-mark); *National Biscuit Co. v. Swick*, 121 Fed. 1007; *Liggett & M. Tobacco Co. v. Reid Tobacco Co.*, 104 Mo. 53, 24 Am. St. Rep. 313, 15 S. W. 843; *W. A. Gaines & Co. v. E. Whyte Grocery, F. & W. Co.*, 107 Mo. App. 507, 81 S. W. 648. In the following cases relief was refused, either because the symbol did not amount to a technical trade-mark, because the imitation did not infringe, or because some element prescribed by statute was absent: *Amoskeag Mfg. Co. v. Trainer*, 101 U. S. 55,

imitations are wrongful, and the like, the reader must be referred to the special treatises upon the subject."⁴³

§ 578. **Unfair Competition.**—It is not essential that a party have a technical trade-mark in order to be entitled to the protection of equity. When one imitates the goods, form of packages, labels, or name of his business competitor in such a way as to deceive the public, he may be enjoined at the suit of such competitor.⁴⁴

25 L. ed. 995; *Goodyear Co. v. Goodyear Rubber Co.*, 128 U. S. 598, 9 Sup. Ct. 166, 32 L. ed. 535; *Moorman v. Hoge*, 2 Saw. 78, Fed. Cas. No. 9783; *Falkinburg v. Lucy*, 35 Cal. 52, 95 Am. Dec. 76; *Choynski v. Cohen*, 39 Cal. 501, 2 Am. Rep. 476; *Ball v. Siegel*, 116 Ill. 137, 56 Am. Rep. 766, 4 N. E. 667; *Weener v. Brayton*, 152 Mass. 101, 25 N. E. 46, 8 L. R. A. 640; *Ames v. King*, 2 Gray, 379; *McCartney v. Garnhart*, 45 Mo. 593, 100 Am. Dec. 397; *Smith v. Woodruff*, 48 Barb. 438; *Taylor v. Gillies*, 59 N. Y. 331, 17 Am. Rep. 333; *Enoch Morgan's Sons Co. v. Troxell*, 89 N. Y. 292, 42 Am. Rep. 294; *Raggett v. Findlater*, L. R. 17 Eq. 29; *Cope v. Evans*, L. R. 18 Eq. 138; *Escourt v. Escourt etc. Co.*, L. R. 10 Ch. App. 276 (right to relief lost by delay). In the following cases relief was refused because both parties were entitled to use the trade-mark: *Coffeen v. Brunton*, 5 McLean, 256, Fed. Cas. No. 2947; *Caswell v. Hazard*, 121 N. Y. 492, 18 Am. St. Rep. 833, 24 N. E. 707. In *Chadwick v. Covell*, 151 Mass. 190, 21 Am. St. Rep. 442, 23 N. E. 1068, 6 L. R. A. 839, it was held that an injunction will not issue to restrain the use of a trade-mark after the death of the original proprietor. To the effect that intentional fraud is not an essential element of relief, see *Coffeen v. Brunton*, 4 McLean, 516, Fed. Cas. No. 2946; *Williams v. Brooks*, 50 Conn. 278, 47 Am. Rep. 642; *Pratt's Appeal*, 117 Pa. St. 401, 2 Am. St. Rep. 676, 11 Atl. 878; *Bourne v. Swan & Edgar, L'd.*, [1903] 1 Ch. 211, 223. Nor is it necessary that anyone be actually deceived: *Bourne v. Swan & Edgar, L'd.*, [1903] 1 Ch. 211, 223.

⁴³ Pom. Eq. Jur., § 1354.

⁴⁴ The principle is well stated by Mr. Justice Brown in *Coats v. Merrick Thread Co.*, 149 U. S. 562, 13 Sup. Ct. 966, 37 L. ed. 847: "There can be no question of the soundness of the plaintiff's proposition that, irrespective of the technical question of trade-mark, the defendants have no right to dress their goods up in such a manner as to deceive an intending purchaser, and induce him to believe he is buying those of the plaintiffs. Rival manufacturers may lawfully compete for the patronage of the public in the quality and price of their goods, in the beauty and tastefulness of their inclosing

The ground for this jurisdiction is the general one of the prevention of fraud on the public.⁴⁵ We have already seen that this is one of the reasons given for

packages, in the extent of their advertising, and in the employment of agents, but they have no right, by imitative devices, to beguile the public into buying their wares under the impression they are buying those of their rivals."

45 "The essential nature of all trade-mark suits is the same, whether they rest upon infringement or unfair competition. At the foundation of the law lies the rule that every person should so use his own property as not to injure the property of another. The essence of the wrong consists in the sale of the goods of one person as those of another. It is only when this false representation is directly or indirectly made that a court of equity will grant relief": *Heublein v. Adams*, 125 Fed. 782, per Colt, Cir. J. Continuing, the learned judge says: "Every trade-mark case is based upon fraud, actual or constructive. In technical trade-mark cases fraud is presumed, while in cases of unfair competition the plaintiff must prove a fraudulent intention, or show facts and circumstances from which it may reasonably be inferred." The distinction made here practically amounts to this: that in cases of technical trade-marks the real wrong consists in a violation of an exclusive right; in cases of unfair competition, it consists in deception. It would seem more accurate to say that in cases of technical trade-marks it will be presumed that the infringement will *work* a fraud, while in cases of unfair competition this must be proved. An actual fraudulent intention is not necessary in either class of cases: See cases cited in succeeding note. The distinction between the exclusive right and the other right is explained in *Lawrence Mfg. Co. v. Tennessee Mfg. Co.*, 138 U. S. 537, 11 Sup. Ct. 396, 34 L. ed. 997. A clear statement is found in the opinion of Sanborn, Cir. J., in *Shaver v. Heller & Merz Co.*, 108 Fed. 821, 48 C. C. A. 48: "The contention of counsel for the appellants here is a confusion of the bases of two classes of suits,—those for infringements of trade-marks, and those for unfair competition in trade. Suits of the former class rest on the ownership of the trade-marks. Suits of the latter class are founded upon the damage to the trade of the complainants by the fraudulent passing of the goods of one manufacturer for those of another. In the former, title to the trade-marks is indispensable to a good cause of action; in the latter, no proprietary interest in the words, names, or means by which the fraud is perpetrated is requisite to maintain a suit to enjoin it. It is sufficient that the complainant is entitled to the custom—the good will—of a business, and that this good will is injured, or is about to be injured, by the palming off of the goods of another as his."

the protection of trade-marks, but in those cases there is the added element of the protection of an exclusive right. In the class of cases we are now considering, there is no exclusive right in the sense in which we speak of such a right in regard to trade-marks. Courts in speaking of these cases generally classify them as instances of unfair competition. An actual fraudulent intention, although generally present, is not essential.⁴⁶ The injury is the same whatever the motive may be. The wrong consists in deceiving the public to the injury of the plaintiff. If the public is deceived and the plaintiff is injured as a result, the defendant's good intentions cannot excuse the wrong.

§ 579. Same—Continued.—Unfair competition takes many forms. It may consist in the imitation of the color, form or style of the boxes, bottles or packages

⁴⁶ See *Bissell Chilled Plow Works v. T. M. Bissell Plow Co.*, 121 Fed. 357; *Von Faber v. Faber*, 124 Fed. 603; *Van Houten v. Hooton Cocoa & C. Co.*, 130 Fed. 600; *Koebel v. Chicago Landlord's Protective Bureau*, 210 Ill. 176, 102 Am. St. Rep. 154, 71 N. E. 362; *Viano v. Baccigalupo*, 183 Mass. 160, 67 N. E. 641. In *Enterprise Mfg. Co. v. Landers*, 124 Fed. 923, Platt, D. J., said: "On the question of actual intent to deceive, the law is positively clear that the intent may be inferable from the circumstances of the case. In other words, every one is held to be accountable for the natural and probable result of his acts." See a similar statement by Lacombe, Cir. J., in same case on appeal: 131 Fed. 240, 65 C. C. A. 587. See, also, *Allen B. Wrisley Co. v. Iowa Soap Co.*, 122 Fed. 796. In *Davies Co. Dist. Co. v. Martinoni*, 117 Fed. 186, Morrow, Cir. J., said: "The question of intent, therefore, being removed from consideration, complainant could only have relief from its alleged wrongs if the acts of the defendant, however innocent in intent, resulted in such damage to complainant as will be taken cognizance of by a court of equity." It is sometimes stated that actual fraudulent intent is essential, but it is believed that such statements will generally be found to be mere *dicta*. Even if the original use were innocent, a continuance after knowledge of similarity would be such fraud as would warrant relief: See *Van Houten v. Hooton Cocoa & C. Co.*, 130 Fed. 600.

used by a competitor.⁴⁷ Again, it may consist in the imitation of a label in common use.⁴⁸ It may be the designation of an article by a name similar to that used by a competitor, although the name is not such as can be a technical trade-mark.⁴⁹ It may be such a close

⁴⁷ *Hygienic Fleeced Underwear Co. v. Way* (C. C. A.), 137 Fed. 592 (imitation of packages); *Devlin v. McLeod*, 135 Fed. 164; *Bickmore Gall Cure Co. v. Karns* (C. C. A.), 134 Fed. 833; *Drewry & Son v. Wood*, 127 Fed. 887 (similar packages and labels); *Seriven v. North*, 124 Fed. 894 (imitation of packages); *A. Bauer & Co. v. Distillerie De La Liqueur Benedictine*, 120 Fed. 74, 56 C. C. A. 480 ("It is true that no one has a monopoly of form, nor has he a monopoly of color, of the shape of the letters, or geographical names, or of his own name, but one may not, by means lawful in themselves when devoted to a lawful end, perpetrate a fraud upon the public, or infringe the rights of another"); *A. Bauer & Co. v. Order of Carthusian Monks*, 120 Fed. 78, 56 C. C. A. 484 (imitation of bottles of a peculiar shape); *A. Bauer & Co. v. Siegert*, 120 Fed. 81, 56 C. C. A. 487 (imitation of bottles and name); *Enoch Morgan's Sons Co. v. Whittier-Coburn Co.*, 118 Fed. 657 (imitation of name and package); *Keuffel & Esser Co. v. H. S. Crocker Co.*, 118 Fed. 187 (use of similar names, same form of package, and same color of wrapping); *C. F. Simmons Medicine Co. v. Simmons*, 81 Fed. 163; *New England Awl etc. Co. v. M. A. & N. Co.*, 168 Mass. 154, 60 Am. St. Rep. 377, 46 N. E. 386 (imitation of packages); *Alexander v. Morse*, 14 R. I. 153, 51 Am. Rep. 369. Mere use of same numbers or letters to denote quality does not constitute unfair competition: *Stevens Linen Works v. William & John Don & Co.*, 121 Fed. 171; *Vacuum Oil Co. v. Climax Refining Co.*, 120 Fed. 254; *Dennison Mfg. Co. v. Scharf Tag, Label & Box Co.* (C. C. A.), 135 Fed. 625.

⁴⁸ *Cauffman v. Schuler*, 123 Fed. 205; *Lanahan v. John Kissel & Son*, 135 Fed. 899; *A. Bauer & Co. v. Order of Carthusian Monks*, 120 Fed. 78, 56 C. C. A. 484; *Sartor v. Schaden* (Iowa), 101 N. W. 511 (although label was a stock label sold by a printing firm); *Metcalf v. Brand*, 86 Ky. 331, 9 Am. St. Rep. 282, 5 S. W. 773; *Johnson & Johnson v. Seabury & Johnson* (N. J. Eq.), 61 Atl. 5; *Manitowoc Malting Co. v. Milwaukee Malting Co.*, 119 Wis. 543, 97 N. W. 389 (unfair imitation of trade symbol will be enjoined whether technically a trade-mark or not; where calculated to deceive, injunction may issue before any actual deception has resulted).

⁴⁹ *Globe-Wernicke Co. v. Brown*, 121 Fed. 185 (injunction against use of word "Elastic" as applied to bookcases); *Draper v. Skerrett*, 116 Fed. 206. Likewise, an injunction may issue to prevent the pro-

imitation of the article itself as to color, size, or lettering as to deceive purchasers.⁵⁰ In all these cases the question is whether the similarity is such as to cause confusion and to deceive the public into taking other goods than those of plaintiff.⁵¹ If this confusion and deception will result, equity will generally grant an injunction.

duction of a play under a name similar to that of a play being produced by plaintiff: *Hopkins Amusement Co. v. Frohman*, 202 Ill. 541, 67 N. E. 391. But the use of a word which has become generic will not be enjoined when there is no attempt to deceive: *La Republique Francaise v. Saratoga Vichy Spring Co.*, 191 U. S. 427, 24 Sup. Ct. 145, 48 L. ed. 247. For cases involving the use of trade-names, see the succeeding section.

50 *Globe-Wernicke Co. v. Brown & Besley*, 121 Fed. 90, 57 C. C. A. 344 (defendant placed files on the market so like plaintiff's in name, size and color as to mislead ordinary customers); *Enterprise Mfg. Co. v. Landers*, 124 Fed. 923 (affirmed 131 Fed. 240, 65 C. C. A. 587); *Scriven v. North* (C. C. A.), 134 Fed. 366; *Edison Mfg. Co. v. Gladstone* (N. J. Eq.), 58 Atl. 391. In a few cases retailers have been enjoined from selling another article when complainant's is called for, thus passing off another article as complainant's: *Samuel Bros. & Co. v. Hostetter Co.*, 118 Fed. 257, 55 C. C. A. 111; *N. K. Fairbanks Co. v. Dunn*, 126 Fed. 227.

51 "It is not necessary that the resemblance should be such as would deceive first or intelligent purchasers. It is sufficient if it be calculated to deceive the unwary, the incautious, or the ignorant purchaser. Neither need the resemblance be so great that one would be deceived who should see the labels placed side by side. If an ordinary purchaser, looking at the article offered to him, would naturally be led, from the label attached to it, to suppose it to be the product of a rival manufacturer, and would purchase it in that belief, the court will enjoin the use of such article as fraudulent": *Cauffman v. Schuler*, 123 Fed. 205, 206. Compare *Allen B. Wrisley Co. v. Iowa Soap Co.*, 122 Fed. 796, 59 C. C. A. 54, where it is said that there is no wrong when a person using ordinary care would not be deceived. A party using similar devices is obliged only to take such care as the use of such devices and the space in which they are used will allow: *Coats v. Merrick Thread Co.*, 149 U. S. 562, 13 Sup. Ct. 966, 37 L. ed. 847. In the following case it was held that the imitation was not such as to warrant an injunction: *Gail v. Wackerbarth*, 28 Fed. 286.

§ 580. Trade-names.—Where one adopts a trade-name so similar to that of another that confusion is sure to result and the public will thereby be deceived, an injunction will issue at the suit of the party who first adopted the name.⁵² It is beyond the scope of this treatise to discuss in detail what may be appropriated as a trade-name. It is sufficient to state that such a name must not so closely resemble another's name as to be calculated to deceive.⁵³ The name of a person

⁵² *Walter v. Ashton*, [1902] 2 Ch. 282; *Janney v. Pan-Coast Ventilator & Mfg. Co.*, 128 Fed. 121 (*semble*); *Elgin Nat. Watch Co. v. Loveland*, 132 Fed. 41; *Weinstock, Lubin & Co. v. Marks*, 109 Cal. 529, 50 Am. St. Rep. 57, 42 Pac. 142, 30 L. R. A. 182 ("Mechanics' Store" infringed by "Mechanical Store"); *Koebel v. Chicago Landlords' Protective Bureau*, 210 Ill. 176, 102 Am. St. Rep. 154, 71 N. E. 362 (name "Landlords' Pro. Bureau" infringed by "Landlords' Pro. Department"); *Great Hive of L. of M. v. Supreme Hive of L. of M. (Mich.)*, 97 N. W. 779 (injunction against benefit society, extending into field in competition with society of similar name); *Rickard v. Caton College Co.*, 88 Minn. 242, 92 N. W. 958; *Drake Medicine Co. v. Glessner*, 68 Ohio St. 337, 67 N. E. 722 (*semble*); *Cady v. Schultz*, 19 R. I. 193, 61 Am. St. Rep. 763, 32 Atl. 915, 29 L. R. A. 524. In *Chadron Opera House Co. v. Loomer (Neb.)*, 99 N. W. 649, it is said that a plaintiff, in order to establish his right "must make it appear with at least reasonable certainty that his adoption of the name was prior in time to that of his adversary; that he adopted and made use of it in such manner as would reasonably apprise the public that he intended it as a distinctive appellation for his trade, commodity, or place of business; and that it was not, at the time of his attempted appropriation of it, in common or general use in connection with like businesses, commodities, buildings, or localities." An injunction has been denied where the similarity has been merely in the part of the name descriptive of the business: *Industrial Mut. Deposit Co. v. Central Mutual Deposit Co.*, 112 Ky. 937, 23 Ky. Law Rep. 2247, 66 S. W. 1032. Also, where the name had a well-defined meaning when adopted by plaintiff: *Grand Lodge A. O. U. W. v. Graham*, 96 Iowa, 592, 65 N. W. 837, 31 L. R. A. 133. Where a rival wrongfully uses a trade-name, a purchaser may be restrained from selling the goods in such manner as to deceive customers into believing the goods to be those of complainant: *Walter Baker & Co. v. Slack*, 130 Fed. 514, 65 C. C. A. 138.

⁵³ "It is true that a man cannot appropriate a geographical name,

may become so associated with his goods that one of the same name, coming into the business later, will not be allowed to use even his own name without distinguishing his wares; and if he attempts to do so, he will be restrained by a court of equity.⁵⁴ As in all cases of

but neither can he a color, or any part of the English language, or even a proper name, to the exclusion of others whose names are like his. Yet a color, in connection with a sufficiently complex combination of other things, may be recognized as saying so circumstantially that the defendant's goods are the plaintiff's as to pass the injunction line. So, although the plaintiff has no copyright on the dictionary, or any part of it, he can exclude the defendant from a part of the free field of the English language, even from the mere use of generic words, unqualified and unexplained, when they would mislead the plaintiff's customers to another shop. . . . And so, we doubt not, may a geographical name acquire a similar association, with a similar effect": *American Waltham Watch Co. v. United States Watch Co.*, 173 Mass. 85, 73 Am. St. Rep. 263, 53 N. E. 141, 43 L. R. A. 826, per Holmes, J.; *Viano v. Baccigalupo*, 183 Mass. 160, 67 N. E. 641.

⁵⁴ *J. & P. Coats, Ltd., v. John Coates Thread Co.*, 135 Fed. 177; *Ball v. Best*, 135 Fed. 434; *Wm. Rogers Co. v. International Silver Co.*, 118 Fed. 133, 55 C. C. A. 83; *Chickering v. Chickering & Sons*, 120 Fed. 69, 56 C. C. A. 475; *Royal Baking Powder Co. v. Royal*, 122 Fed. 337, 58 C. C. A. 499 ("Whatever injury results to the complainant company from the honest and fair use by the defendant of his own name in his own business is a damage which must be endured. It is a natural consequence of the adoption of the name of a person as a trade and corporate name. But the defendant must not use his name in the business in which complainant has embarked, without using every means reasonably possible to distinguish his business from that of the complainant, and his goods from those made by it"); *Von Faber v. Faber*, 124 Fed. 603; *Walter Baker & Co. v. Sanders*, 80 Fed. 889, 26 C. C. A. 220; *Van Stan's Stratena Co. v. Van Stan*, 209 Pa. St. 564, 103 Am. St. Rep. 1018, 58 Atl. 1064; *International Silver Co. v. Wm. H. Rogers Corp.* (N. J. Eq.), 60 Atl. 187. Compare *Meneely v. Meneely*, 3 *Thomp. & C.* 540, 1 *Hun*, 367. In *Howe Scale Co. v. Wyckoff, Seamans & Benedict*, 198 U. S. 118, 25 *Sup. Ct.* 608, 49 *L. ed.* — (overruling 122 Fed. 348, 58 C. C. A. 510), it was held that the use by a party named Remington of the name "Remington-Sholes Co.," in the manufacture of typewriters is not calculated to deceive purchasers of "Remington" typewriters, and will not be enjoined.

unfair competition, an actual fraudulent intent is unnecessary.⁵⁵

§ 581. **Corporate Names.**—The right of one corporation or an individual to enjoin another from using a similar corporate name depends largely upon the form of the statutes. When there are no statute provisions as to the choice of names, and parties organize a corporation under general laws, they choose a name at their peril. If they take one so like that of an existing corporation as to be misleading, and calculated to deceive the public, they may be enjoined, if there is no language in the statute to the contrary.⁵⁶ On the other hand, where

⁵⁵ *Bissell Chilled Plow Works v. T. M. Bissell Plow Co.*, 121 Fed. 357; *Von Faber v. Faber*, 124 Fed. 603; *Koebel v. Chicago Landlords' Protective Bureau*, 210 Ill. 176, 102 Am. St. Rep. 154, 71 N. E. 362; *Viano v. Baccigalupo*, 183 Mass. 160, 67 N. E. 641.

⁵⁶ The language here used is practically the same as that used by Holmes, J., in a *dictum* in *American Order of Scottish Clans v. Merrill*, 151 Mass. 558, 24 N. E. 918, 8 L. R. A. 320. In support of the text, see *Van Houten v. Hooton Cocoa & C. Co.*, 130 Fed. 600; *J. & P. Coats, Ltd., v. John Coates Thread Co.*, 135 Fed. 177; *Selchow v. Chaffee & Selchow Mfg. Co.*, 132 Fed. 996; *Dodge Stationery Co. v. Dodge*, 145 Cal. 380, 78 Pac. 879; *International Com. Y. W. C. A. v. Young Women's Christian Assn.*, 194 Ill. 194, 62 N. E. 551, 56 L. R. A. 888; *Lamb Knit Goods Co. v. Lamb Glove & Mitten Co.*, 120 Mich. 159, 78 N. W. 1072, 44 L. R. A. 841 (injunction because confusion exists, although defendant is in another town); *International Silver Co. v. Wm. H. Rogers Corp.* (N. J. Eq.), 60 Atl. 187; *Eureka Fire Hose Co. v. Eureka Rubber Mfg. Co.* (N. J. Eq.), 60 Atl. 561; *Glucose Sugar Ref. Co. v. American Glucose etc. Co.* (N. J. Eq.), 56 Atl. 861; *Edison Storage Battery Co. v. Edison Automobile Co.* (N. J. Eq.), 56 Atl. 861; *St. Patrick's Alliance v. Byrne*, 59 N. J. Eq. 26, 44 Atl. 716; *Higgins Co. v. Higgins Soap Co.*, 144 N. Y. 462, 43 Am. St. Rep. 679, 39 N. E. 490, 27 L. R. A. 42; *Armington v. Palmer*, 21 R. I. 109, 79 Am. St. Rep. 786, 42 Atl. 308, 43 L. R. A. 95; *Aiello v. Montecalfo*, 21 R. I. 496, 44 Atl. 931; *Celluloid Mfg. v. Cellonite Mfg. Co.*, 32 Fed. 94. Relief was refused in *Nebraska Loan & Trust Co. v. Nine*, 27 Neb. 507, 20 Am. St. Rep. 686, 43 N. W. 348, because the proof failed to show that there would be any material interference with business. The suit was to restrain the use of the name of a loan and trust com-

the language of the statute makes the certificate of the state official conclusive, and perhaps where the defendant is organized under special act, there is no redress.⁵⁷ In some instances injunctions have been granted at the suit of foreign corporations, restraining domestic corporations from using similar names.⁵⁸ It would seem that such relief should be freely granted at the suit of a domestic against a foreign corporation doing business within the state.⁵⁹

§ 582. Application of "Clean Hands" Maxim.—It is a well-established maxim that he who comes into equity must come with clean hands. This applies strongly to parties seeking relief against the infringement of trade-marks and against unfair competition. One seeking relief against the frauds of others must himself be free from fraud. An exclusive privilege for deceiving the public is assuredly not one that a court of equity can be required to aid or sanction. Accordingly, it is held that "it is essential that the plaintiff should not in his trade-mark, or in his advertisements and business, be himself guilty of any false or misleading representation; that if the plaintiff makes any material false statement in connection with the property which he seeks to

pany by parties about to organize a corporation in a city one hundred miles away.

⁵⁷ *American Order of Scottish Clans v. Merrill*, 151 Mass. 558, 24 N. E. 918, 8 L. R. A. 320; *Paulino v. Portuguese Ben. Assn.*, 18 R. I. 165, 26 Atl. 36, 20 L. R. A. 272.

⁵⁸ *Philadelphia Trust, S. D. & Ins. Co. v. Philadelphia Trust Co.*, 123 Fed. 534; *Red Polled Cattle Club v. Red Polled Cattle Club*, 108 Iowa, 105, 78 N. W. 803.

⁵⁹ *American Clay Mfg. Co. of Pa. v. American Clay Mfg. Co. of N. J.*, 198 Pa. St. 189, 47 Atl. 936; *International Trust Co. v. International Loan & Trust Co.*, 153 Mass. 271, 26 N. E. 693, 10 L. R. A. 758 (under statute prohibiting foreign corporation from doing business in state under name previously in use by domestic corporation).

protect, he loses his right to claim the assistance of a court of equity; that where any symbol or label claimed as a trade-mark is so constructed or worded as to make or contain a distinct assertion which is false, no property can be claimed on it, or, in other words, the right to the exclusive use of it cannot be maintained.”⁶⁰ Thus, relief has been denied to parties seeking an injunction against the use of the words “fig syrup” when

⁶⁰ *Clinton E. Worden & Co. v. California Fig Syrup Co.*, 187 U. S. 516, 23 Sup. Ct. 161, 47 L. ed. 282, per Shiras, J. See, also, *Pidding v. How*, 8 Sim. 477; *Leather Cloth Co. v. American Leather Cloth Co.*, 4 De Gex, J. & S. 136, 11 H. L. Cas. 523; *Perry v. Truefitt*, 6 Beav. 66; *Manhattan Medicine Co. v. Wood*, 108 U. S. 218, 2 Sup. Ct. 436, 27 L. ed. 706 (medicine manufactured by complainant in New York; trade-mark declared it was manufactured by another person in Massachusetts); *Krauss v. Jos. R. Peebles’ Sons Co.*, 58 Fed. 585 (liquor sold by plaintiff as “Pepper Whisky” was in fact a mixture); *Clotworthy v. Schepp*, 42 Fed. 62 (no protection for “fruit puddine” when preparation contains no fruit); *Connell v. Reed*, 128 Mass. 477, 35 Am. Rep. 397 (use of words “East Indies” to denote a medicine not used there and the formula of which was not obtained there, will not be protected); *Prince Mfg. Co. v. Prince’s Metallic Paint Co.*, 135 N. Y. 24, 31 N. E. 990, 17 L. R. A. 129 (false representation as to place where ore was obtained); *Fetridge v. Wells*, 13 How. Pr. 385 (use of name “Balm of a Thousand Flowers” not protected when liquid is not an extract nor distillation of flowers); *C. F. Simmons Med. Co. v. Mansfield Drug Co.*, 93 Tenn. 84, 23 S. W. 165; *Palmer v. Harris*, 60 Pa. St. 156, 100 Am. Dec. 557; *Heath v. Wright*, 3 Wall. Jr. 141, Fed. Cas. No. 6310 (injunction to protect quack patent medicine refused). In the following cases statements calculated to make the public believe an article to be patented, when in fact it was not, were held sufficient to bar relief: *Flavel v. Harrison*, 10 Hare, 467; *Cheavin v. Walker*, L. R. 5 Ch. D. 850. But in other cases, under somewhat different conditions, the opposite conclusion has been reached: *Marshall v. Ross*, L. R. 8 Eq. 651 (word “patent” as applied to “patent thread” had become a word of art); *Ford v. Foster*, L. R. 7 Ch. 611. It has been held that a mere false or exaggerated statement in advertising a manufactured article tending to recommend its use to the public will not deprive a plaintiff of his right to an injunction: *Curtis v. Bryan*, 2 Daly, 312. See, also, *Dixon Crucible Co. v. Guggenheim*, 2 Brewst. 321. For further illustrations, see 2 Pom. Eq. Jur. (3d ed.), § 934, notes 10 and (k); 1 Pom. Eq. Jur., § 402, n.

it has appeared that figs constituted a very small if any part of plaintiff's compound bearing that name.⁶¹ Other instances of the application of the principle will be found in the notes.

§ 583. **Exclusive Franchises.**—An injunction is the appropriate remedy to protect a party in the enjoyment of an exclusive franchise against continuous encroachments. "Such continuous encroachments constitute a private nuisance which courts of equity will abate by injunction. The jurisdiction rests on the firm and satisfactory ground of its necessity to avoid a ruinous multiplicity of suits, and to give adequate protection to the plaintiff's property in his franchise."⁶² To be entitled to relief, a plaintiff need show only that he is entitled to a franchise and that there is continuous interference therewith by the defendant.⁶³ It is not necessary that

⁶¹ *Clinton E. Worden & Co. v. California Fig Syrup Co.*, 187 U. S. 516, 23 Sup. Ct. 161, 47 L. ed. 282.

⁶² *Walker v. Armstrong*, 2 Kan. 198. The reasons for the exercise of the jurisdiction are well stated by Shaw, J., in *Boston & Lowell R. Corp. v. Salem & Lowell R. Co.*, 2 Gray, 1, 27: "It is a right or title, which, if it exist at all, is purely a statute right. It is created by law, it exists only in contemplation of law, it is invisible, intangible and incapable of a physical possession, and depends on the law for its protection. If the right exists and has been invaded, the appropriate and specific remedy, that which shall prevent the continuing invasion, is by injunction, and this can be afforded only in equity. . . . An injunction will generally be granted to secure the enjoyment of a statute privilege, of which the party is in actual possession, unless the right is doubtful. . . . In regard to the limited equity jurisdiction of this court, it is proper to state, that if the plaintiffs are disturbed in the enjoyment of their franchise or incorporeal right, such a disturbance is technically a nuisance." See, also, *St. Louis R. Co. v. Northwestern etc. R. Co.*, 69 Mo. 65 (proof of injury is not essential); *Raritan & D. B. R. Co. v. Delaware & R. C. Co.*, 18 N. J. Eq. 546; *Newburgh & C. Turnpike Road v. Miller*, 5 Johns. Ch. 101; *Carroll v. Campbell*, 108 Mo. 550, 17 S. W. 884.

⁶³ In order to establish his right, plaintiff must show not only a grant from the proper authority, but also the fulfillment of all obli-

the plaintiff first establish his right at law.⁶⁴ In some instances injunctions have been granted to parties having an exclusive right, to restrain another claiming the

gations imposed upon him by the act granting the franchise as conditions precedent. And there may be implied obligations, the fulfillment of which are necessary before relief will be granted. Thus, in a Kansas case, it is said: "There is, however, an implied obligation imposed upon the grantee of a ferry franchise by his acceptance of the grant, to furnish the necessary means of transit for travelers. His privileges are granted for the benefit of the traveling public, and until he is prepared to serve them he has acquired no right to prohibit others from doing so": *Walker v. Armstrong*, 2 Kan. 198. The exclusive franchises which are protected by injunction are many. In the following cases relief was granted:

For the protection of a ferry franchise.—*Walker v. Armstrong*, 2 Kan. 198; *Chard v. Stone*, 7 Cal. 117; *City of New York v. Starin*, 106 N. Y. 1, 12 N. E. 631; *Patterson v. Wollman*, 5 N. D. 608, 67 N. W. 1040, 33 L. R. A. 536.

For the protection of a toll bridge.—*The Binghamton Bridge*, 3 Wall. 51, 18 L. R. A. 137; *Piscataqua Bridge v. New Hampshire Bridge*, 7 N. H. 35.

For the protection of a turnpike.—*Newburgh & C. Turnpike Road v. Miller*, 5 Johns. Ch. 101; *Croton Turnpike Co. v. Ryder*, 1 Johns. Ch. 611; *Ames, Cas. in Eq. Jur.* 611.

For the protection of an exclusive right to supply gas.—*New Orleans Gas-Light Co. v. Louisiana Light etc. Co.*, 115 U. S. 650, 6 Sup. Ct. 252, 29 L. ed. 516; *Crescent City Gaslight Co. v. New Orleans Gaslight Co.*, 27 La. Ann. 138; *Elizabethtown Gaslight Co. v. Green*, 46 N. J. Eq. 118, 18 Atl. 844, affirmed, 49 N. J. Eq. 329, 24 Atl. 560.

For the protection of an exclusive railroad franchise.—*Boston & Lowell R. Corp. v. Salem & Lowell R. Co.*, 2 Gray, 1; *St. Louis R. Co. v. Northwestern etc. R. Co.*, 69 Mo. 65; *Raritan & D. B. R. Co. v. Delaware & R. C. Co.*, 18 N. J. Eq. 546.

For the protection of an exclusive right of a public weigher.—*Davidson v. Sadler*, 23 Tex. Civ. App. 600, 57 S. W. 54.

For the protection of a market franchise.—*Wilcox v. Steel*, [1904] 1 Ch. 212.

⁶⁴ *Moor v. Veazie*, 31 Me. 360 ("Where a state has the right to make the grant, and it has been made, and the required conditions have been performed, it has been held to be equivalent to a determination at law that the right exists"). For early English cases *contra*, see *Whitechurch v. Hide*, 2 Atk. 391; *Ames, Cas. in Eq. Jur.* 661, 663; *Anonymous*, 2 Vea. 414.

exclusive right from setting it up, the ground of the jurisdiction being the removal of a cloud upon the title to the franchise.⁶⁵ It is sometimes held that an exclusive right conferred by statute must yield to the public use, upon just compensation being paid therefor. In cases where the defendant is authorized to take advantage of the eminent domain laws, the injunction should be limited so as to remain in force only until compensation is paid.⁶⁶

§ 584. Same—Continued.—It is not necessary, “to entitle the owner to relief in equity, that the franchise should be an exclusive franchise in the sense that the grant of another similar franchise to be exercised and enjoyed at the same place would be void.” The theory is “that the defendant, who has no franchise, is acting in violation of law in operating . . . without authority from the sovereign power, and that the owner of the franchise may complain of and restrain such illegal acts when they result in injury to his franchise, which, in the eye of the law, is property. As to the one who is invading his rights without legal sanction, the franchise is an exclusive franchise, although the owner of it might not be entitled to any protection as against the granting of a similar franchise to another.”⁶⁷

⁶⁵ *People's Electric L. & P. Co. v. Capital Gas & E. L. Co.*, 25 Ky. Law Rep. 327, 75 S. W. 280 (the cloud is “preventing it from selling, pledging or mortgaging its stock, or selling its bonds, in consequence of which it has been unable to erect its electric plant, or to enjoy the franchise granted it by the city of Frankfort”); *Citizens' Gaslight Co. v. Louisville Gas Co.*, 81 Ky. 263.

⁶⁶ *Nashville, M. & S. Turnpike Co. v. Davidson County*, 106 Tenn. 258, 61 S. W. 68.

⁶⁷ *Patterson v. Wollman*, 5 N. D. 608, 67 N. W. 1040, 33 L. R. A. 536, and cases cited; *Carroll v. Campbell*, 108 Mo. 550, 17 S. W. 884; *Green v. Ivey* (Fla.), 33 South. 711; *Tugwell v. Eagle Pass Ferry Co.*, 74 Tex. 480, 9 S. W. 120, 13 S. W. 654. See, also, *Mc-*

Innis v. Pace, 78 Miss. 550, 29 South. 835 (ferry); **Cauble v. Craig**, 94 Mo. App. 675, 69 S. W. 49 (ferry); **Midland Terminal & Ferry Co. v. Wilson**, 28 N. J. Eq. 537 (ferry); **Smith v. Harkins**, 3 Ired. Eq. 613, 44 Am. Dec. 83 (exclusive in grantee unless legally and duly ordered otherwise by the public authorities); **Appeal of Douglass**, 118 Pa. St. 65, 12 Atl. 834 ("the grant of the ferry franchises, without its being exclusive in terms, is the grant of the exclusive privilege, as against one having no such grant"); **Twin Village Water Co. v. Damariscotta Water Co.**, 98 Me. 325, 56 Atl. 1112; **Pennsylvania R. Co. v. National R. Co.**, 23 N. J. Eq. 441.

CHAPTER XXVIII.

INJUNCTION AGAINST INTERFERENCE WITH FREEDOM OF TRADE OR EMPLOYMENT; COM- BINATIONS, STRIKES, BOYCOTTS, ETC.

ANALYSIS.

- § 585. I. When such injunction is granted.
- § 586. II. A question of newly defined rights.
- §§ 587-610. III. How these rights may be invaded by the combina-
tion.
- § 588. Analysis of the rights.
- §§ 589-592. (1) Procuring or inducing a breach of contract as a
legal wrong.
- § 590. (a) By acting upon the employee.
- § 591. (b) By acting upon the customer or dealer.
- § 592. (c) By interference with the performance of business.
- §§ 593-599. (2) Interference where no contract relation exists.
- § 594. (a) Right to continuance free from interference.
- § 595. (b) Justifiable interference—Persuasion.
- §§ 596-597. (c) Procuring discharge or withdrawal of workmen, or
loss of customers.
- § 597. (c1) Does motive affect liability?
- § 598. (d) Right to have labor or trade flow freely—The right
of probable expectancy.
- § 599. (e) Right to have personal freedom protected.
- §§ 600-610. (3) Injunction because of the means employed—In-
timidation.
- § 601. (a) The strike.
- § 602. (b) The threat to strike.
- § 603. (c) Intimidating threats.
- § 604. (d) Picketing.
- § 605. (e) Moral intimidation.
- §§ 606-610. (f) The boycott.
- § 607. (f1) The boycott of persuasion.
- § 608. (f2) The boycott of fear.
- § 609. (f3) The boycott as a weapon of competition.
- § 610. (f4) The blacklist.
- §§ 611-617. IV. Grounds for the injunction.
- § 612. (1) Destruction of complainant's business or vocation.
- § 613. (2) Multiplicity of suits.

- § 614. (3) Continuing injury.
- § 615. (4) Nuisance.
- § 616. (5) Interference, by intimidation, with legal right.
- § 617. (6) The combination may be enjoined as a conspiracy.
- § 618. V. Mandatory injunction.
- § 619. VI. Where act enjoined is a crime.
- § 620. VII. Against whom does injunction run.
- § 621. VIII. Preliminary injunction against a combination.
- § 622. IX. Combinations in restraint of interstate commerce.
- §§ 623-628. X. Combinations of capital—Boycotting combinations.
- § 624. (1) The boycott is the unlawful element.
- § 625. (2) Mere loss of business not ground for the injunction.
- § 626. (3) Where the combination is a monopoly.
- § 627. (4) A combination of capital in restraint of interstate commerce is enjoined.
- § 628. (5) Injunctions against combinations in violation of State Trade and Commerce Statutes.

§ 585. **When Such Injunction is Granted.**—The question whether an injunction will be granted against a combination of labor or capital is answered by an examination for three elements. These elements are: First, Is a legal right invaded or about to be invaded? Second, Is the invasion of this right by unlawful or unjustifiable means, or with an unlawful or unjustifiable purpose? Third, Is the remedy at law for such an invasion of plaintiff's right inadequate?

§ 586. **A Question of Newly Defined Rights.**—The rapid increase of powerful combinations of labor and capital in the past few years has opened a new field to legal exploration, and compelled a new determination of the rights open to an invasion by such combinations, and required new tests of what constitutes unjustifiable means and purpose.¹ The line between combination that is fair

¹ See Wm. L. Hodge in 28 Am. Law Rev. 47, on Wrongful Interference by Third Persons with Rights of Employers and Employed. For a collection of authorities on injunctions against organized labor up to date of 1894, see Reports of Am. Bar Assn., Vol. 17, p. 299.

The author is indebted for this chapter to Professor Geo. H. Boke, of the Department of Jurisprudence, University of California.

competition and combination that is unlawful is being drawn tentatively and at varying points by the different jurisdictions. The question of injunctions against combinations, so far as there is a new question, is largely one of the *lawfulness* of the combination, considering its purpose and means. And this question is largely one for a new definition, viz., the nature of the workman's property in his labor, and the extent of the owner's rights in the management of his business;—how far the workman may be protected from the interference of third parties in his contract to labor, or in his more recently conceded rights to continue in employment when not under contract and to seek and have work free from outside influence. Likewise, as to the employer's rights—to have his contracts protected from irresistible influence of combinations, to have his non-contract labor let alone, to have labor and custom flow freely to him, and generally the intangible property of his "business" free from interference otherwise than in fair competition. Thus, it appears that the principal part of the problem of the remedy of injunction against combination of labor and capital is not so much the question of the injunction, for that is dependent on settled principles of equity jurisprudence, but is rather the determination of the substantive law as to the right itself. For instance, the question, will an injunction be granted to restrain a combination from procuring the discharge of a workman or the loss of a customer, depends primarily on the point,—are such acts actionable wrongs?

§ 587. **How These Rights may be Invaded by the Combination.**—For the reasons just considered, to understand the remedy of injunction against such combinations it is necessary to determine, first, the nature of the *right*

invaded by the act of the combination of labor or capital. And this determination can best be made by analyzing the problem into its parts. A natural division of the ever-increasing mass of data arising from the exercise of the weapon of combination, from the point of view of its legal significance, gives the following analysis:

§ 588. **Analysis of the Rights.**—The legal wrong arising from: 1. Inducing or procuring a breach of contract by the combination exercising its power upon the different parties, (a) the employer, (b) the employee, (c) the customer or dealer, or otherwise by interference with the performance of outside business contracts.

2. By interference with the parties where no contract relation exists—the more common case. As this is done by the combination procuring by its great power the discharge or withdrawal of workmen not under contract, or the loss of customers or suppliers not under contract, the analysis of the rights may be thus stated: 2. Where no contract relation exists. (a) Right to continuance free from interference. (b) Justifiable interference,—persuasion. (c) Procuring the discharge or withdrawal of workmen or the loss of customers. 3. A third phase of the analysis extends to an interference beyond even the relation where there is no contract between the parties, but merely the possibility of their entering into some relation,—as to whether there is such a legal right, which equity can protect from the power of the combination. The search for this right, aptly termed that of “probable expectancy,” leads in the analysis to the combination preventing the free flow of labor to the employer, of custom to seller, and of employment to the laborer, and may be expressed in the analysis of these legal rights as—3. The right to have

labor or trade flow freely, or the right of probable expectancy.

There remains a more general right which may be termed: 4. The right to have personal freedom protected. Some of the rights previously discussed are derived to some extent from this source, as well as from the right to property, but have been recognized as specially existing rights by the courts. The more general right of personal liberty is thus a residuum to draw upon in working out these rights, but is also to be regarded by itself in seeking the foundation for the injunction.

§ 589. **Procuring or Inducing a Breach of Contract as a Legal Wrong.**—As to the first of these, procuring or inducing a breach of contract, the old law which confined the remedy to enticement of servants from masters has been from time to time extended, beginning with *Lumley v. Gye*² and *Bowen v. Hall*³ in England,⁴ so that today it is a fair statement of the law, in the words of Lord MacNaghten, quoted in *Quinn v. Leathem*⁵ with approval, that “it is a violation of a legal right to interfere with contractual relations if there be no sufficient justification.” In *Jersey City Printing Co. v. Cassidy*,⁶ the court said: “That the interest of an employer or employee in a contract for services is property is conceded.” And, it continues, causing “the disruption of a contract relation, to the injury of one of

² *Lumley v. Gye*, 2 El. & B. 216.

³ *Bowen v. Hall*, 6 Q. B. D. 333.

⁴ In *Taff Vale Ry. v. Society of Ry. Servants*, [1901] App. Cas. 426, an injunction was granted against the defendant's “procuring any persons who had or might enter into such contracts with plaintiffs from breaking such contracts.”

⁵ *Quinn v. Leathem*, [1901] App. Cas. 495.

⁶ *Jersey City Printing Co. v. Cassidy*, 63 N. J. Eq. 759, 763, 53 Atl. 230.

the contracting parties, is now very generally recognized as actionable in the absence of sufficient justification, and the question in every case seems to turn on justification alone." This represents the view generally taken by the American courts called to pass upon the question of late years.⁷ But some American courts have not yet accepted this view.⁸

§ 590. **By Acting upon the Employee.**—An injunction will issue against a combination of men inducing workmen to break their contracts with their employers, if their act is without justification.⁹ The glassworkers' union induced several apprentices to join their union, knowing that they were under contract not to join any union. An injunction was granted against them individually and as members of the union, restraining them perpetually from "persuading said apprentices to break their

⁷ A combination of employees, glass-blowers, was enjoined from "inducing by money payments or coercing by threats, etc., employees to break their contracts": *George Jonas Glass Co. v. Glass Blowers' Assn.*, 64 N. J. Eq. 644, 54 Atl. 565. In another instance, a combination of workmen was enjoined from "persuading apprentices to break their contracts by enticing them to join a union": *Flaccus v. Smith*, 199 Pa. St. 128, 85 Am. St. Rep. 779, 48 Atl. 894, 54 L. R. A. 640. In *Underhill v. Murphy*, 25 Ky. Law Rep. 1731, 78 S. W. 482, a recent case (1904), an injunction was given against a combination of union men interfering with contracts between a plumber and his customers: *Newhall v. Murphy* (Ky. App.), 78 S. W. 482.

⁸ *Boyson v. Thorn* (1893), 98 Cal. 578, 33 Pac. 492, 21 L. R. A. 233, and cases cited therein.

⁹ *Flaccus v. Smith et al.* (1901), 199 Pa. St. 128, 85 Am. St. Rep. 779, 48 Atl. 894, 54 L. R. A. 640. Similar injunctions were granted in *Taff Vale Ry. Co. v. Society of Railway Servants*, [1901] App. Cas. 426; *Glamorgan Coal Co. v. S. Wales Miners' Federation*, [1903] 2 K. B. 595 (in this case an immediate injunction was refused, but leave was reserved to apply for an injunction if necessary, and the court held that the act of the Miners' Union in ordering a stop-day of their members was an actionable wrong against their employers, as it procured a breach of contract without just cause).

contracts by enticing them into the union.”¹⁰ Many courts assume that the injunction will be granted as a matter of course when it is shown that the contracts with employees are about to be broken so as to withdraw the men from employment, although some go into the pertinent question as to whether the injury threatened really is irreparable and without adequate remedy at law.¹¹

§ 591. **By Acting upon the Customer or Dealer.**—Where a combination procures or induces a customer or dealer to break his contract, the act is unlawful, if without justification, and may be enjoined, under proper circumstances, by the seller.¹² *Temperton v. Russell*¹³ decided that the principle established by *Bowen v. Hall*,¹⁴ viz., that the “actionable wrong committed by

10 *George Jonas Glass Co. v. Glass Blowers’ Assn.* (1903), 64 N. J. Eq. 644, 54 Atl. 565 (injunction against “inducing employees to break their contracts”). In *Jersey City Printing Co. v. Cassidy* (1902), 63 N. J. Eq. 759, 763, 53 Atl. 230, Stephenson, V. C., says: “Where defendants in combination or individually undertake to interfere with and disrupt existing contract relations between the employer and employee, it is plain that a property right is directly invaded.” An injunction was granted restraining former employees, members of the union, interfering with other men employed under contract. In the following cases it was decided to be an actionable wrong to induce a workman to break his contract with the employer: *Quinn v. Leathem*, [1901] App. Cas. 495; *Read v. Society of Stone Masons*, [1902] 2 K. B. D. 732.

11 *Flaccus v. Smith* (1901), 199 Pa. St. 128, 85 Am. St. Rep. 779, 48 Atl. 894, 54 L. R. A. 640, where the court said if interference with plaintiff’s business by inducing employees to break their contract will ruin plaintiff’s business if continued, equity will enjoin the defendants.

12 *Lubricating Oil Co. v. Standard Oil Co.* (1886), 42 Hun (N. Y.), 153; *Matthews v. Shankland*, 25 Misc. Rep. 604, 56 N. Y. Supp. 123; *Sun Printing & Publishing Assn. v. Delaney* (1900), 48 N. Y. App. Div. 623, 62 N. Y. Supp. 750.

13 *Temperton v. Russell*, [1893] 1 Q. B. D. 715, 730.

14 *Bowen v. Hall*, 6 Q. B. D. 333.

one who induces a party to a contract to break it, intending thereby to injure another person or to get a benefit for himself"—is not confined to contracts of personal service. *Temperton v. Russell*, though weakened by *Allen v. Flood*,¹⁵ is now re-established by *Quinn v. Leathem*.¹⁶ The leading point established, however, by *Allen v. Flood*, *i. e.*, a malicious motive does not make an otherwise lawful act unlawful and actionable, seems to be restated in *Quinn v. Leathem*, in the old form—that an act inducing one party to break his contract or business relations, while lawful if with justification, is unlawful without such justification.

§ 592. By Interference with the Performance of Business. An injunction will be granted against a combination attempting to prevent the performance of the employer's contracts where the interference to business threatens its destruction. Thus, where a striking union, in order to coerce an employer, a plumber, so intimidated his workmen where they undertook to carry out contracts to do plumbing, that the work was prevented, an injunction was granted on the ground that his business was being destroyed. The court said: "The right of plaintiff to carry on his business and to carry out contracts which he had made was a valuable property right, and no less intrinsically property than if it were merchandise."¹⁷ The right to carry on a lawful business is a property right, and will be protected.¹⁸

§ 593. Interference Where No Contract Relation Exists.—A similar series of questions is presented where the

¹⁵ *Allen v. Flood*, [1898] App. Cas. 1.

¹⁶ *Quinn v. Leathem*, [1901] App. Cas. 495.

¹⁷ *Underhill v. Murphy et al.* (1904), 25 Ky. Law Rep. 1731, 78 S. W. 482, 483.

¹⁸ *Nashville C. & St. L. Ry. Co. v. McConnell*, 82 Fed. 65.

workmen or customers are not under contract. Is it an actionable wrong to procure or induce the discharge or withdrawal of workmen not under contract, or procure or induce the withdrawal of customers not under contract?¹⁹ If these acts are actionable wrongs an injunction will evidently be granted under conditions admitting the equitable remedy.

§ 594. Right to Continuance Free from Interference.—

While in some cases the courts try to distinguish between the contract rights and these less clearly defined rights, there now seems to be a general consensus that there is a right to continue in employment,²⁰ a right to have men continue in employment,²¹ and a right to have customers trade free from intimidation,²² that these are property rights, and that a combination to interfere with these rights otherwise than in fair competition must show justification. The great divergence of the cases is not on the point of the existence of the rights, but as to what constitutes justification; except that inter-

¹⁹ In *Lucke v. Clothing Cutters' Union*, 77 Md. 396, 39 Am. St. Rep. 421, 26 Atl. 505, 19 L. R. A. 408, it was held to be an actionable wrong to procure the discharge of a non-union man by threatening the employer to notify all union men of the city that his house was non-union.

²⁰ *Beck v. Railway Teamsters' Union*, 118 Mich. 497, 77 N. W. 13; *Sherry v. Perkins*, 147 Mass. 212, 9 Am. St. Rep. 689, 17 N. E. 307.

²¹ *Beaton et al. v. Tarrant* (1902), 102 Ill. App. 124; *Frank v. Herold* (1901), 63 N. J. Eq. 443, 52 Atl. 152; *Erdman v. Mitchell*, 207 Pa. St. 79, 99 Am. St. Rep. 783, 56 Atl. 327; *Beattie v. Callanan*, 67 App. Div. 14, 73 N. Y. Supp. 518.

²² *Doremus v. Hennessy* (1892), 176 Ill. 608, 68 Am. St. Rep. 203, 52 N. E. 924, 54 N. E. 524, 43 L. R. A. 797; *Martin v. McFall* (1903), 65 N. J. Eq. 91, 55 Atl. 465; *Graham v. St. Chas. Street Ry. Co.*, 47 La. Ann. 214, 49 Am. St. Rep. 366, 16 South. 806; *Gray v. Building Trades Council* (1903), 91 Minn. 171, 13 Am. St. Rep. 477, 97 N. W. 663, 63 L. R. A. 753; *Jeans Clothing Co. v. Watson et al.* (1902), 168 Mo. 133, 67 S. W. 391.

ference with these rights by mere persuasion is not actionable, and will not be enjoined.²³

The two leading cases which have refused interference in this class of cases are *Allen v. Flood*,²⁴ in England (1898), and *National Protective Assn. v. Cumming*²⁵ (New York, 1902), in the United States. The force of *Allen v. Flood* has been greatly weakened by the House of Lords in the late great case of *Quinn v. Leatham*.²⁶ That case says *Allen v. Flood* is to be considered as deciding merely, that giving *information* by certain workmen, through an agent, that they *had* decided to quit if the plaintiff should be retained, was not actionable.

§ 595. Justifiable Interference—Persuasion.—The American courts generally agree that interference with the employee's right to continue in employment, or the employer's right to have such continued employment, not under contract, where such interference is by direct coercion or intimidation of the employee, is ground for an injunction.²⁷ But when the interference with these rights is by persuasion and peaceable means, it is not generally in the American courts considered unlawful, and an injunction will not be given.²⁸ In England, the

²³ *Rogers v. Evarts*, 17 N. Y. Supp. 264; *Reynolds v. Everett*, 144 N. Y. 189, 39 N. E. 72; *Foster v. Retail Clerks' Assn.* (1902), 39 Misc. Rep. (N. Y.) 48, 78 N. Y. Supp. 860.

²⁴ *Allen v. Flood*, [1898] App. Cas. 1.

²⁵ *National Protective Assn. v. Cumming* (1902), 170 N. Y. 315, 88 Am. St. Rep. 648, 63 N. E. 369, 58 L. R. A. 135, reversing the decree of the supreme court in *National Protective Assn. v. Cumming*, 53 App. Div. 227, 65 N. Y. Supp. 946, which had granted the injunction.

²⁶ *Quinn v. Leatham*, [1901] App. Cas. 495.

²⁷ *Beaton v. Tarrant* (1902), 102 Ill. App. 124; *Union Pac. R. R. v. Ruef*, 120 Fed. 102; *Murdock v. Walker*, 152 Pa. St. 595, 34 Am. Rep. 678, 25 Atl. 492.

²⁸ *Fletcher Co. v. Association of Machinists* (N. J. Ch.), 55 Atl.

injunction extends to interference by persuasion,²⁹ but this extension rests upon an act of Parliament.³⁰ The gist of the American cases seems to be that while there is a right to continue in employment and a right to have men continue in employment, it is fair competition for a combination to interfere with either of these rights by persuasion or any peaceable means, but not fair competition to use coercion or intimidation; hence such interference will be enjoined. These rights are usually considered from the point of view of the employer asking an injunction for interference with his right through interference with his employee, as most of the cases arise in this manner.

§ 596. **Procuring the Discharge of Workmen.**—The case of the employee seeking injunction is found where his discharge is procured by coercion or intimidation of his employer, as by means of a threatened strike or boycott. The line between the right of the non-union man to be protected from injury, and of the union man to better himself by fair combination, is so close that the cases fall on both sides of it. Thus, in a late case, where the members of a union threatened to call a strike if the employer did not discharge members of a rival union in his employment, the court said this was a combination to injure a man's property right, his right to work, and was an unlawful act which equity would

1077; *Foster v. Retail Clerks' Assn.*, 39 Misc. Rep. 48, 78 N. Y. Supp. 860; *Bohn Mfg. Co. v. Hollis*, 54 Minn. 223, 40 Am. St. Rep. 319, 55 N. W. 1119, 21 L. R. A. 337; *Rogers v. Evarts*, 17 N. Y. Supp. 264; *Reynolds v. Everett*, 144 N. Y. 189, 39 N. E. 72.

²⁹ *Taff Vale Ry. v. Amalgamated Society of Railway Servants*, [1901] App. Cas. 426. Here injunction was granted against the society, etc., "watching or besetting works of plaintiff, etc., for purpose of persuading or otherwise preventing persons from working for plaintiff," etc.

³⁰ Act of 1876.

restrain; it said, "Where unions combine to prevent others obtaining work by threats of a strike, or to prevent an employer from employing others by threats of a strike, they combine to accomplish an unlawful purpose, which courts are bound to restrain."³¹ But under similar circumstances, the New York court of appeals, in *National Protective Assn. v. Cumming*, reversed a decree which had granted an injunction against one labor union procuring the discharge of members of a rival labor union by threatening the employer with a general strike. Parker, C. J., put the decision on the ground that the union had a right to strike, and hence a right to give its reasons for intending to strike; that such a lawful act, though causing the discharge of other workmen, needed no justification. But if it did, it was found in the right to further its own interests, and at least no malice could be presumed.³² The American cases generally have been in line with *Erdmann v.*

³¹ *Erdmann v. Mitchell* (1903), 207 Pa. St. 79, 99 Am. St. Rep. 783, 56 Atl. 327.

³² *National Protective Assn. v. Cumming et al.*, 53 App. Div. 227, 65 N. Y. Supp. 946; on appeal (1902), 170 N. Y. 315, 88 Am. St. Rep. 648, 63 N. E. 369, 58 L. R. A. 135. The case had a strong dissent by Vann, J., based on *Quinn v. Leathem*; the case seems *contra* to a preceding line of New York cases like *Curran v. Galen*, 152 N. Y. 33, 57 Am. St. Rep. 496, 46 N. E. 297, 37 L. R. A. 802; *Davis v. United Engineers* (1898), 28 App. Div. 396, 51 N. Y. Supp. 180; *Mills v. United States etc. Co.*, 99 App. Div. 605, 91 N. Y. Supp. 185. In this case an injunction was prayed that the plaintiff's employer should not, in accordance with a contract with a labor union, discharge him as a non-union man; and that the members of the union should be restrained from striking to procure his discharge. The injunction was refused as against the employer. As against the members of the union it was so modified that it should allow peaceable striking, boycotting, or picketing.

But a recent case since *National Protective Assn. v. Cumming* has decided that a contract by which the defendant had agreed to employ only union men in good standing is against public policy and unenforceable: *Jacobs v. Cohen*, 99 App. Div. 481, 90 N. Y. Supp. 854.

Mitchell, rather than *National Protective Assn. v. Cumming*.³³ But some later cases are following the latter.³⁴

Procuring the Withdrawal of Workmen or Loss of Customers.—The question, whether the workman, though not under contract, will be protected by injunction from having his discharge procured by a combination of his fellow-workmen operating on the fears of his employer, is paralleled by the claim of right on the part of the employer to be protected by equity from having his non-contract labor or customers withdrawn from him by the exercise of the power of the combination of labor. The courts answer the questions similarly. In England, *Quinn v. Leathem*³⁵ has undoubtedly restated the law along the lines of *Temperton v. Russell*,³⁶ contrary to many of the conclusions from *Allen v. Flood*;³⁷ so that it is now actionable to procure the discharge of a customer not under contract, or of an employee under contract,³⁸ and by inference an employee not under contract,³⁹ where there is not sufficient justification. And a desire to punish a fellow-workman for not joining the union, by forcing his discharge in order to benefit the union by strengthening its power, is not sufficient justification. But it is not actionable to inform an employer of a determination to strike because of certain workmen employed unless

³³ *Doremus v. Hennessy*, 176 Ill. 608, 68 Am. St. Rep. 203, 53 N. E. 924, 54 N. E. 524, 43 L. R. A. 797.

³⁴ *Jersey City Printing Co. v. Cassidy*, 63 N. J. Eq. 759, 53 Atl. 230; *Mayer v. Stonecutters' Assn.* (1890), 47 N. J. Eq. 519, 20 Atl. 492.

³⁵ *Quinn v. Leathem*, [1901] App. Cas. 495.

³⁶ *Temperton v. Russell*, [1893] 1 Q. B. D. 715.

³⁷ *Allen v. Flood*, [1898] App. Cas. 1.

³⁸ *Read v. Society of Stone Masons*, [1902] 2 K. B. D. 732 (action for causing discharge of workman under contract by threat to strike).

³⁹ *Quinn v. Leathem*, *supra*.

they are discharged, where it is given as information. This much narrowed rule seems to be the present interpretation of *Allen v. Flood*,⁴⁰ since the decision of *Quinn v. Leatham*.⁴¹ In the American cases it is generally held that procuring the loss of one's customers by threats and intimidation,—not mere libels of complainants,—will be enjoined.⁴²

§ 597. Does Motive Affect Liability?—These cases really separate on the question upon which *Allen v. Flood*⁴³ wrought such confusion, viz., Does motive constitute an element of a civil wrong? The majority of the judges there took the view that the defendant's motive could not be considered as affecting his liability. Chief Justice Parker, in *National Protective Association v. Cumming*,⁴⁴ stated the same opinion of the law. Such is the view of the several American courts that have refused to enjoin a threatened strike or boycott by unions or associations having a purpose to obtain an advantage for themselves by procuring employers to discharge workmen or customers to leave their supplier. Thus in *Bohn Mfg. Co. v. Hollis*,⁴⁵ the court declared: "If the

⁴⁰ *Allen v. Flood*, [1898] App. Cas. 1.

⁴¹ *Quinn v. Leatham*, [1901] App. Cas. 495.

⁴² *Casey v. Typographical Union*, 45 Fed. 135, 12 L. R. A. 193; *Emack v. Kane*, 34 Fed. 46; *Barr v. Essex Trade Council*, 53 N. J. Eq. 101, 30 Atl. 881. As to libels, see *post*, §§ 629-631.

⁴³ *Allen v. Flood*, [1898] App. Cas. 1.

⁴⁴ *National Protective Assn. v. Cumming* (1902), 170 N. Y. 315, 83 Am. St. Rep. 648, 63 N. E. 369, 58 L. R. A. 135.

⁴⁵ *Bohn Mfg. Co. v. Hollis* (1893), 54 Minn. 223, 233, 40 Am. St. Rep. 319, 55 N. W. 1119, 21 L. R. A. 337. A later Minnesota case, *Ertz v. Produce Exchange*, 79 Minn. 140, 79 Am. St. Rep. 433, 81 N. W. 737, 48 L. R. A. 90, while not overruling the case of *Bohn Mfg. Co. v. Hollis*, *supra*, yet takes issue with its view of motive, and makes motive the determining element. Similarly see *Olive v. Van Patten*, 7 Tex. Civ. App. 630, 25 S. W. 428. See, also, *Heywood v. Tillson* (1882), 75 Me. 225, 234, 46 Am. Rep. 373.

act be lawful—one that the party has a legal right to do—the fact that it may be actuated by an improper motive does not render it unlawful.” But the majority of American courts do not accept this view as the law, as it appears in labor and trade disputes.⁴⁶ The recognized leading case of *Walker v. Cronin*⁴⁷ says the act of procuring the workmen to leave was wrongful when done without justification, and this constituted malice. The leading American writers agree with this trend of the American cases, and do not accept the *dictum* of *Allen v. Flood* that a malicious motive cannot make an otherwise lawful act unlawful. Professor William Draper Lewis concludes an examination of the labor and trade cases on this point thus: “Though there are cases to the contrary, the rule is to consider the motive of the defendant as a factor in determining the question of his liability for the harm which his act has caused the plaintiff.”⁴⁸ Professor James Barr Ames says: “The *dictum* that our law never regards motive as an element in a civil wrong is as far from the truth as would be the statement that malevolently to damage another is always a tort. The truth lies in the middle. In certain cases, in spite of the wrongful motive of the actor, malevolently to damage another is

⁴⁶ *Erdmann v. Mitchell* (1903), 207 Pa. St. 79, 99 Am. St. Rep. 783, 56 Atl. 327; *Plant v. Woods* (1900), 176 Mass. 492, 79 Am. St. Rep. 330, 57 N. E. 1011, 51 L. R. A. 339; *Moore v. Bricklayers' Union* (1889), 23 Ohio Wkly. Bul. 48; *Delz v. Winfree* (1891), 80 Tex. 400, 26 Am. St. Rep. 755, 16 S. W. 111; *Moran v. Dunphy*, 177 Mass. 485, 83 Am. St. Rep. 289, 59 N. E. 125, 52 L. R. A. 115; *Commonwealth v. Hunt*, 4 Met. (Mass.) 111, 38 Am. Dec. 346 (this case held that where the motive is justifiable no action lies; as where men refuse to work unless a fellow-workman is discharged where he is incompetent or depraved); *Mattison v. Lake Shore & M. S. Ry. Co.*, 3 Ohio Sup. & C. P. Dec. 526.

⁴⁷ *Walker v. Cronin* (1871), 107 Mass. 555.

⁴⁸ “Motive in Trade and Labor Cases,” Professor Wm. Draper Lewis, *Columbia Law Review* for February, 1905, 5 C. L. R. 107, 121.

lawful, either because the act is merely the exercise of an absolutely legal right, or because it is justified by paramount considerations of public policy. Except in such cases, however, willfully to damage another by a positive act and from a spirit of malevolence is a tort, even though the same act, if induced by a rightful motive, would be lawful."⁴⁹ Professor Ames eliminates the word "malice" from the discussion because of its different meanings, which confuse the issue.

§ 598. Right to have Labor or Trade Flow Freely—The Right of Probable Expectancy.—The most recent extension of these rights which may be invaded by a combination is the right of labor or trade to flow freely.⁵⁰ Has the

⁴⁹ "How Far an Act may be a Tort Because of the Wrongful Motive of the Actor," J. B. Ames, *Harvard Law Review* for April, 1905, 18 H. L. R. 411, 422. See, also, "Interference with Contracts and Business in New York," E. F. Huffcutt, *Harvard Law Review* for April, 1905, 18 H. L. R. 423. Professor Huffcutt points out that the cases before *National Protective Assn. v. Cumming* recognized motive as an element in labor and trade torts. "*Curran v. Galen* [152 N. Y. 33, 57 Am. St. Rep. 496, 46 N. E. 297, 37 L. R. A. 802] distinctly recognizes that motive may be material."

⁵⁰ In *Jersey City Printing Co. v. Cassidy* (1902), 63 N. J. Eq. 759, 763, 764, 53 Atl. 230, Stevenson, V. C., says: "It is only very recently that one of the most important rights which are now vindicated by the injunction in a strike case has been differentiated; in many cases it has been apparently half recognized or indirectly enforced. . . . The difficult case presents itself when the workmen in a combination undertake to interfere with the freedom of action on the part of other workmen who naturally would seek employment when they (the workmen in combination) desire and intend that no man shall be employed excepting upon their own terms. The difficulty is in perceiving how molestation and annoyance, not of the employees of complainant, but of persons who are merely looking for work and may become employees of complainant, can be erected into a legal or equitable grievance on the part of the complainant. The difficulty is further increased when the possible employees make no complaint to any court for protection. . . . The problem is to understand how one who is merely the victims' possible employer can complain either at law or in equity, there being no contract of service, but

laborer a right to go to an employer to seek labor, which equity will protect? Has the employer a right to have labor flow freely to him, so that he may call on equity to enjoin interference with a man who as yet has no relation with him, but whom he is desirous of having as employee? Has one a right to have the way protected between him and possible customers or suppliers? The most recent cases answer each question affirmatively. Stevenson, V. C., in an able statement of this modern development, draws this conclusion: "Our law, in its recent development, undertakes to insure to him [the employer] not only that he may employ whom he pleases, but that all who wish to be employed by him may enter into and remain in such employment freely, without threats of harm, without unreasonable molestation and annoyance from the words, action or other conduct of any other persons *acting in combination*."⁵¹ The right being recognized, the employer is given an injunction against a combination which seeks to interfere with his "probable expectancy"

only a potential one." "The molested workman, seeking employment and unreasonably interfered with in this effort by a combination, has an action for damages at the common law, and where the molestation is repeated and persistent, a right to an injunction." "The underlying right in this particular case under consideration, which seems to be coming into general recognition as the subject of protection by courts of equity, through the instrumentality of an injunction, appears to be the right to enjoy a certain free and natural condition of the labor market, which in a recent case in the House of Lords was referred to in the language of Lord Ellenborough, as a 'probable expectancy,' . . . the right which every man has to employ or to be employed. The peculiar element of this perhaps newly recognized right is the interest which one man has in the freedom of another." "It is freedom in the market, freedom in the purchase and sale of all things, including both goods and labor, that our modern law is endeavoring to insure to every dealer on either side of the market."

⁵¹ *Ibid.*

of trade or labor, his right to have labor and trade flow freely to him, when the interference is by coercion or intimidation.⁵² But endeavoring to prevent persons seeking employment of complainant from accepting such employment by conveying information, and by orderly and peaceable persuasion, is lawful and will not be enjoined.⁵³

The right of trade and labor to flow freely is therefore not as complete as the right to have a contract free from the interference of third persons. But it is something more than the right of personal liberty which it seems to have developed from. A part of the employer's right to have trade and labor flow freely to him is the right that access to his property should not be interfered with.⁵⁴

§ 599. The Right to have Personal Freedom Protected.—The primary right that one's personal liberty should not be interfered with by combinations of persons is protected by equity. Thus, an interference with the right of the laborer to travel on the highway, by means of numbers of men or by physical force, will be enjoined where its continuance is threatened.⁵⁵

⁵² *Ibid*; *Beaton et al. v. Tarrant* (1902), 102 Ill. App. 124; *Vege-lahn v. Guntner*, 167 Mass. 92, 57 Am. St. Rep. 443, 44 N. E. 1081, 35 L. R. A. 722; *Frank v. Herold et al.* (N. J. Eq., 1901), 25 Atl. 152; *Arthur v. Oakes*, 63 Fed. 310, 11 C. C. A. 209, 24 U. S. App. 239, 25 L. R. A. 414.

⁵³ *Fletcher Co. v. Association of Machinists* (N. J. Eq., 1903), 55 Atl. 1077.

⁵⁴ *Metropolitan Land Co. v. Manning*, 98 Mo. App. 248, 71 S. W. 696; *Coeur d'Alene Min. Co. v. Miners' Union*, 51 Fed. 260, 19 L. R. A. 382; *George Jonas Glass Co. v. Glass Blowers' Assn. et al.*, 64 N. J. Eq. 640, 54 Atl. 565.

⁵⁵ *Mackall v. Ratchford*, 82 Fed. 41; *Coeur d'Alene Min. Co. v. Miners' Union*, 51 Fed. 260, 19 L. R. A. 382; *American Steel & Wire Co. v. Wire Workers' Union*, 90 Fed. 608, 613.

§ 600. **Injunctions Because of the Means Employed—Intimidation.**—The question of injunction against combinations of labor unions will next be considered from the point of view of the *means* employed. When will an injunction be given against interference with one's business or employment? The injunction is usually sought by the employer, although the act sought to be enjoined is most frequently operative directly on his employees. But brought by whichever party, the main test is, Do the means used amount to *intimidation*? The ordinary means used by the combinations of labor to accomplish their ends are the strike and the boycott; and as incidents to these, picketing, patrolling, congregating in numbers, threats, violence, coercion, circulars, placards, and blacklisting.

§ 601. **The Strike.**—Although formerly, at common law, a combination to secure higher wages was an unlawful conspiracy, now the right to combine and "strike" is everywhere recognized by statute or decision. But an *order* to strike which would cause a breach of existing contracts between the workingmen and employer may be enjoined, if there is not sufficient justification.⁵⁶ And an order to unions to strike where the strike was merely sympathetic, and would interfere with interstate commerce, was enjoined by the federal court⁵⁷ on the ground that it was an arbitrary strike without cause, and used for purpose of a boycott.

⁵⁶ Glamorgan Coal Co. v. S. Wales Amalgamated Miners' Fed., [1903] 2 K. B. D. 545. The miners' federation, in order to maintain the price of coal, on which the wage scale depended, ordered stop-days, to lessen production. This was held to be an actionable wrong, and leave was reserved to apply for an injunction if necessary. Dissent by Vaughan Williams on ground of justification existing in the duty of the officers to advise the act.

⁵⁷ Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co., 54 Fed. 746, 19 L. R. A. 395.

§ 602. **Threat to Strike.**—Where a threat to strike is used as a means of intimidation of an employer to procure the discharge of non-union or rival workmen, will an injunction be granted? The cases have shown a recent tendency to diverge on this point. The English cases prior to *Allen v. Flood* held it to be an unlawful act.⁵⁸ *Allen v. Flood*⁵⁹ held that information, amounting to a threat, that certain union workmen would leave if plaintiffs were not discharged was not actionable, though malicious. But *Quinn v. Leathem*⁶⁰ says that a threat to call out men, given to an employer by a union to procure the discharge of other men, is actionable. The court would have undoubtedly granted an injunction in the case. The point was expressly made by the court of appeal in *Giblan v. National Amal. Labor Union*⁶¹ (1903), that a threat by a union to cause a strike if certain workmen were not discharged was actionable, and leave was given to apply for an injunction if necessary. In the United States the present weight of authority is with *Erdmann v. Mitchell*,⁶² that a threat to strike, made by a combination, unless other non-union or rival union men be discharged, is a combination to injure another's property right by the coercive means of intimidating his employer, and will be enjoined. But, as has been already noticed, there have been recent strong decisions the other way, notably *National Protective Assn. v. Cumming* (New York, 1902),⁶³ and *Jersey City Printing Co. v. Cassidy*.⁶⁴ The

⁵⁸ *Temperton v. Russell*, [1893] 1 Q. B. D. 715.

⁵⁹ *Allen v. Flood*, [1898] App. Cas. 1.

⁶⁰ *Quinn v. Leathem*, [1901] App. Cas. 495.

⁶¹ *Giblan v. National Amal. Labor Union*, [1903] 2 K. B. 600.

⁶² *Erdmann v. Mitchell* (1903), 207 Pa. St. 79, 99 Am. St. Rep. 783, 56 Atl. 327.

⁶³ *National Protective Assn. v. Cumming*, 170 N. Y. 315, 88 Am. St. Rep. 648, 63 N. E. 369, 58 L. R. A. 135.

⁶⁴ *Jersey City Printing Co. v. Cassidy*, 63 N. J. Eq. 759, 53 Atl.

latter case said: "Union workmen who inform their employer that they will strike if he refuses to discharge all non-union men are acting within their absolute right and are merely dictating terms on which they will be employed."

§ 603. *Intimidating Threats.*—Where the intimidation takes the form of threats of violence, an injunction lies as matter of course,⁶⁵ as it would against interference by violence itself. Where no actual threats of violence are made, the determining factor is whether a threat of physical harm is implied from the acts, or reasonable men would be put in fear from defendants' acts so that they are coerced in their will. The cases of picketing, patrolling, congregating in numbers, and blocking the highways are thus tested. Picketing will be enjoined where the court is satisfied that the purpose or effect is to intimidate.⁶⁶ Likewise as to congregating

230. To the same effect are *Tallmann v. Gaillard*, 27 Misc. Rep. 114, 57 N. Y. Supp. 419; *Mayer v. Journeyman Stonecutters' Assn.*, 47 N. J. Eq. 519, 20 L. R. A. 492, and the more recent case of *Mills v. United States etc. Co.*, 99 App. Div. 605, 91 N. Y. Supp. 185.

⁶⁵ *Mackall v. Ratchford*, 82 Fed. 41; *Ex parte Haggerty*, 124 Fed. 441; *Southern Ry. Co. v. Machinists' Union*, 111 Fed. 49; *Reinecke Coal Co. v. Wood et al.*, 112 Fed. 477; *Hamilton-Brown Shoe Co. v. Saxey*, 131 Mo. 212, 52 Am. St. Rep. 622, 32 S. W. 1106; *Wabash R. Co. v. Hannahan*, 121 Fed. 563; *Murdock v. Walker*, 152 Pa. St. 595, 34 Am. St. Rep. 678, 25 Atl. 492.

⁶⁶ *Reinecke Coal Co. v. Wood*, 112 Fed. 477. In England, by act of Parliament of 1875, "watching and besetting" of employer's premises, even for the peaceful purpose of persuasion of employees to quit work, is unlawful, and the courts enjoin such peaceful picketing: *J. Lyon & Sons v. Wilkins*, [1896] 1 Ch. D. 811, where four men were enjoined from watching plaintiff's premises, the court finding their object was not to gain information, but for the unlawful purpose of persuading employees to quit; *Walters v. Green*, [1899] 2 Ch. 696; *Charnock v. Court*, [1899] 2 Ch. D. 35, where defendants were enjoined from attending at a landing place for the purpose of inducing certain

about employers' premises or workmen's homes, or in the highway in numbers,⁶⁷ where the inference of intimidation is reasonably drawn.

§ 604. *Picketing*.—Picketing for the purpose of peaceful persuasion of employees⁶⁸ or customers, or for the purpose of obtaining information, though interfering with plaintiff's business, is lawful competition, and will not be enjoined. But the mere presence of large numbers, though for an ostensible peaceful purpose of persuasion, may be enjoined as operating unfairly on the will of employees and customers.⁶⁹ Where the presence of numbers, though not intimidating, yet actually obstructs access to, or egress from, complainant's place of business,⁷⁰ or interferes with freedom of the highway, an injunction will be granted on the ground of a continuing nuisance. A continuing trespass on plaintiff's

"strike-breakers" to give up their engagement to go to Halifax to work for plaintiffs.

67 *Mackall v. Ratchford*, 82 Fed. 41. An injunction was issued against strikers marching in the highway for purpose of intimidating employees of plaintiff.

68 *Foster v. Retail Clerks' Assn.*, 39 Misc. Rep. 48, 78 N. Y. Supp. 860; *Reynolds v. Everett*, 144 N. Y. 189, 195, 39 N. E. 72; *Rogers v. Evarts*, 17 N. Y. Supp. 264; *Union Pac. R. Co. v. Ruef*, 120 Fed. 102. A radical case expressing the contrary view is *Knudsen et al. v. Benn et al.* (1903), 123 Fed. 636, where defendants were enjoined from establishing spies or pickets for the purpose of inducing workmen to leave by means of threats, force, or persuasion.

69 *O'Neil v. Behanna* (1897), 182 Pa. St. 236, 61 Am. St. Rep. 702, 37 Atl. 843, 38 L. R. A. 382. In *Standard Tube & Fork Co. v. Union of Bicycle Workers et al.* (1899), 7 Ohio N. P. R. 87, in dissolving a temporary injunction against a patrol, the court said the strikers could reason with the employees, but "they could not assemble in such numbers as to overawe or terrify or bear down the judgment of the men going there to get work."

70 *Metropolitan Land Co. v. Manning*, 98 Mo. App. 248, 71 S. W. 696; *American Steel & Wire Co. v. Wire Workers' Union* (1898), 90 Fed. 608, 615.

property, though only for the purpose of persuading his workmen to quit, will be enjoined.⁷¹

§ 605. **Moral Intimidation.**—What constitutes intimidation? There need be no actual threats of physical harm. But the use of opprobrious epithets and vile language, the act of following workmen to their homes, surrounding or watching their homes, may imply danger of physical harm, and will then be enjoined.⁷² A more difficult question is where the intimidation is not through fear of physical harm from the acts of defendants' combination, but what has been termed by Lord Justice Fry *moral intimidation*,⁷³ where the will and conduct of a person are coerced by a combination of defendants to produce some loss, in a social way or of property. Lord Justice Sterling said that continued threats to an employer to call a strike if certain workmen were not discharged were in the nature of molestation or coercion, and though no physical harm was threatened, the act may be illegal.⁷⁴ The question of social pressure as a form of intimidation was considered in *Vege-lahn v. Guntner*, where the court observed: "Intimidation is not limited to threats of violence or of physical injury to person or property. It has a broader signification, and there also may be a moral intimidation

⁷¹ *New York, L. E. & W. Ry. Co. v. Wenger*, 9 Ohio Dec. 817, 17 Week. Law Bul. 306; *Knudsen et al. v. Benn et al.* (1903), 123 Fed. 636.

⁷² *Jersey City Printing Co. v. Cassidy et al.*, 63 N. J. Eq. 759, 53 Atl. 230; *O'Neil v. Behanna* (1897), 182 Pa. St. 236, 61 Am. St. Rep. 702, 37 Atl. 843, 38 Atl. 382; *Union Pac. Co. v. Ruef*, 120 Fed. 102.

⁷³ *Mogul Steamship Co. v. McGregor*, 23 Q. B. D. 598. Lord Justice Fry there said: "I do not doubt but that it is unlawful and actionable for one man to interfere with another's trade by fraud or misrepresentation or by molesting his customers or those who would be his customers, whether by physical obstruction, or *moral intimidation*."

⁷⁴ *Giblan v. National Amal. Lab. Union*, [1903] 2 K. B. 600, 623.

which is illegal.”⁷⁵ The injunction there issued included social pressure among the forms of intimidation it was directed against. In his dissent, Holmes, J., pointed out that the injunction issued which forbade the defendants’ interfering with the plaintiff’s business “by any scheme organized for the purpose of preventing any person or persons who now or may hereafter be desirous of entering the [plaintiff’s] employment from entering it” includes “refusal of social intercourse, and even organized persuasion or argument, although free from any threat of violence, either express or implied.”⁷⁶ In *Plant v. Woods*⁷⁷ (1900), defendants in combination were enjoined from interfering with employment of plaintiffs (members of a rival union), “by intimidating or attempting to intimidate, by threats, direct or indirect, express or implied, of loss or trouble in business, or otherwise, any person,” etc. The court said: “This threat to strike means that those who have ceased to work will by strong, persistent, and organized persuasion and social pressure of every description do all they can to prevent the employer from procuring workmen to take their places.” The contrary view was taken in *Guethler v. Altman*,⁷⁸ where it was held that letters written by a principal of a school to parents threatening pupils’ suspension if they visited plaintiff’s store, written as part of a systematic effort to damage plaintiff’s business, did not constitute

⁷⁵ *Vegelahn v. Guntner* (1896), 167 Mass. 92, 57 Am. St. Rep. 443, 44 N. E. 1077, 35 L. R. A. 722.

⁷⁶ *Vegelahn v. Guntner* (1896), 167 Mass. 92, 57 Am. St. Rep. 443, 44 N. E. 1077, 35 L. R. A. 722.

⁷⁷ *Plant v. Woods* (1900), 176 Mass. 492, 79 Am. St. Rep. 330, 57 N. E. 1011, 51 L. R. A. 339.

⁷⁸ *Guethler v. Altman* (1901), 26 Ind. App. 587, 84 Am. St. Rep. 313, 60 N. E. 355.

intimidation within the legal meaning of the term, and was not actionable.

§ 606. **The Boycott.**—The question of moral intimidation is seen to be crucial in connection with the other great weapon of combination of workingmen—the boycott. Some courts define “boycott” as always including intimidation and coercion.⁷⁹ But it seems well to distinguish between the boycott of persuasion and the boycott of intimidation and coercion.

§ 607. **Boycott of Persuasion.**—Generally courts will not enjoin the boycott of persuasion; as where a labor union circulates a card that a house is “unfair,” asking union men to keep away,⁸⁰ or notifies prospective customers that plaintiffs are “unfair”;⁸¹ although some courts will enjoin even the boycott of persuasion.⁸²

§ 608. **Boycott of Fear.**—But where the boycott goes beyond a request not to deal with plaintiff and expressly or impliedly threatens a loss to the third party, as a

⁷⁹ *Toledo & A. A. etc. Ry. Co. v. Pennsylvania Co.*, 54 Fed. 746, 19 L. R. A. 395; Taft, J., defined boycott thus: “As usually understood a boycott is a combination of many to cause a loss to one person by coercing others against their will to withdraw from him their beneficial business intercourse, through threats that, unless those others do so, the many will cause similar loss to others.”

⁸⁰ *Foster v. Retail Clerks' Assn.* (1902), 39 Misc. Rep. 48, 78 N. Y. Supp. 860.

⁸¹ *Gray v. Building Trades Council*, 91 Minn. 171, 103 Am. St. Rep. 477, 97 N. W. 663, 63 L. R. A. 753; *Guethler v. Altman* (1901), 26 Ind. App. 587, 84 Am. St. Rep. 313, 60 N. E. 355; *Cohen v. United Garment Workers* (1902), 35 Misc. Rep. 748, 72 N. Y. Supp. 341; *Sinsheimer v. United Garment Workers*, 77 Hun, 215, 28 N. Y. Supp. 321; *Mills v. United States Printing Co.* (1904), 99 App. Div. 605, 91 N. Y. Supp. 185.

⁸² *Doremus v. Hennessy* (1892), 176 Ill. 608, 68 Am. St. Rep. 203, 52 N. E. 924, 54 N. E. 524, 43 L. R. A. 797; *Martin v. McFall* (1903), 65 N. J. Eq. 91, 55 Atl. 465.

customer, if he does deal with plaintiff, as by threatening to boycott *him*, then the courts generally will issue an injunction.⁸³ In *Hopkins v. Oxley Stave Co.*⁸⁴ the court said, in granting an injunction against the union's boycott, that the combination of defendants undertook to prescribe the manner in which the plaintiff company should conduct its business, and "to enforce obedience to its orders by a species of intimidation which is no less harmful than actual violence." In a recent case, in granting an injunction, the court took the ground: It is unlawful for a labor union to attempt to induce or compel complainant to adopt a particular mode of doing his business by persuading or inducing other persons not to deal with him.⁸⁵ Some courts are very ready to imply an intimidation in the boycotting circular or letter, although none exists on the face of it. Thus, in *Sherry v. Perkins*,⁸⁶ an injunction was granted against a boycotting banner bearing

⁸³ *Thomas v. Cincinnati, N. O. & T. P. Ry. Co.* (1894), 62 Fed. 803; *Gray v. Building Trades Council*, 91 Minn. 171, 103 Am. St. Rep. 477, 97 N. W. 663, 63 L. R. A. 763; *Barr v. Essex Trades Council* (1894), 53 N. J. Eq. 101, 30 Atl. 881; *Brace v. Evans*, 5 Pa. Co. Ct. Rep. 163; *Oxley Stave Co. v. Coopers' Union*, 72 Fed. 695; *Martin v. McFall*, 65 N. J. Eq. 91, 55 Atl. 465; *Hopkins v. Oxley Stave Co.* (1897), 83 Fed. 912, 28 C. C. A. 99; *Casey v. Typographical Union*, 45 Fed. 135, 12 L. R. A. 193; *Crump v. Commonwealth* (1888), 84 Va. 927, 10 Am. St. Rep. 895, 6 S. E. 620; *Brown v. Jacobs Pharmacy Co.* (1902), 115 Ga. 429, 90 Am. St. Rep. 126, 41 S. E. 553; *Graham v. St. Charles St. R. R. Co.*, 47 La. Ann. 214, 49 Am. St. Rep. 366, 16 South. 806, 27 L. R. A. 416; *Grand Rapids School Furn. Co. v. Haney School Furn. Co.*, 92 Mich. 558, 31 Am. St. Rep. 617, 52 N. W. 1009, 16 L. R. A. 721; *Matthews v. Shankland*, 25 Misc. Rep. (N. Y.) 604, 56 N. Y. Supp. 123; *Sun Printing & Pub. Assn. v. Delaney* (1900), 48 App. Div. 623, 62 N. Y. Supp. 750; *My Maryland Lodge v. Adt* (Md.), 59 Atl. 721.

⁸⁴ *Hopkins v. Oxley Stave Co.*, 83 Fed. 912, 921, 28 C. C. A. 99.

⁸⁵ *Martin v. McFall* (1903), 65 N. J. Eq. 91, 55 Atl. 465.

⁸⁶ *Sherry v. Perkins*, 147 Mass. 212, 9 Am. St. Rep. 689, 17 N. E. 307.

the words, "Lathers are requested to keep away from Sherry's," on the ground that the banner was a standing menace and a nuisance. Likewise in the early English case of *Springhead Spinning Co. v. Riley*,⁸⁷ where placards were enjoined which said, "Well-wishers wanted not to trouble" *Springhead Spinning Co.* until dispute is settled. Some discredit was later thrown on this case.⁸⁸ In a later American case the court in enjoining a boycotting circular remarked: "A circular containing no words of threat is nevertheless a boycotting circular when it was intended and understood to threaten customers to whom it was sent."⁸⁹ The rule of these cases would seem to be that the instrument of boycott is to be read in the light of the circumstances, and if it naturally tends to intimidate the recipient, it will be enjoined.⁹⁰

The attitude of a majority of the courts is against the boycott of intimidation, though only *moral* intimidation, and the injunction is given as matter of course.⁹¹ One federal court states that it knew of no case in which an injunction was refused against a boycott.⁹²

§ 609. **Boycott as a Weapon of Competition.**—But there is vigorous reasoning to the contrary, looking upon the

⁸⁷ *Springhead Spinning Co. v. Riley*, [1868] L. R. 6 Eq. 551.

⁸⁸ *Prudential Assn. v. Knott*, L. R. 10 Ch. 142.

⁸⁹ *Beck v. Railway Teamsters' Union* (1898), 118 Mich. 497, 74 Am. St. Rep. 421, 77 N. W. 13, 42 L. R. A. 407.

⁹⁰ In *re Wabash Ry. Co.* (C. C.), 24 Fed. 217 (Here the wording was: "You are requested to stay away from the shops, etc. But in no case are you to consider this as an intimidation." The road was in the hands of a receiver, and the above message sent to the workmen was held to be a contempt of court); *Ex parte Richards*, 117 Fed. 658; In *re Doolittle*, 23 Fed. 545; *United States v. Kane*, 23 Fed. 748, 750, 757.

⁹¹ *Plant et al. v. Woods et al.* (1900), 176 Mass. 492, 79 Am. St. Rep. 330, 57 N. E. 1011, 51 L. R. A. 339; *Thomas v. Cincinnati N. O. & T. P. Ry. Co.*, 62 Fed. 803.

⁹² *Casey v. Typographical Union*, 45 Fed. 135, 12 L. R. A. 193.

boycott as a proper means of competition. Caldwell, J., in dissenting in the *Oxley Stave Case*, said: "These [the strike and the boycott] are labor's only weapons, and they are lawful and legitimate weapons, and so long as in their use there is no force or threats of violence or trespass on person or property, their use cannot be restrained."⁹³ Thus, he would admit the boycott of moral intimidation,—as coercion through threatened loss of business,—as a proper instrument of competition. Holmes, J., takes much the same view. Speaking, in dissent, of the intentional inflicting of harm in free competition, he says: "It cannot be done by force or threats of force. It may be done by persuasion. . . . It may be done by the withdrawal, or threat to withdraw, such advantages from third persons who have a right to deal or not to deal with the plaintiff, as a means of inducing them not to deal with him either as customer or servants."⁹⁴ Several recent cases have gone upon this view of lawful competition and have refused an injunction against a boycott by *moral* intimidation.⁹⁵ In a Missouri case⁹⁶ (1902) it was refused on the ground of interference with the constitutional right

⁹³ Caldwell, J., in dissent in *Hopkins v. Oxley Stave Co.*, 83 Fed. 912, 921, at p. 936, 28 C. C. A. 99.

⁹⁴ *Vegelahn v. Guntner* (1896), 167 Mass. 92, 57 Am. St. Rep. 443, 44 N. E. 1077, Holmes, J., dissenting.

⁹⁵ *Sinsheimer v. United Garment Workers*, 77 Hun, 215, 28 N. Y. Supp. 321; *Robinson v. Texas Pine Land Assn.* (Tex. Civ. App.), 40 S. W. 843 (defendant company, owning also a store, threatened its employees with dismissal if they traded at a rival store. Injunction refused on ground of fair competition. Defendant had right to control its employees to its own advantage); *Passaic Print Works v. Dry Goods Co.* (1900), 105 Fed. 163, 44 C. C. A. 426 (this case held that the mere presence of a malicious motive to injure rival by driving away his customers was not ground for an injunction where the act was in limit of fair competition.)

⁹⁶ *Marx & Haas Clothing Co. v. Watson et al.* (1902), 168 Mo. 133, 90 Am. St. Rep. 440, 67 S. W. 391, 56 L. R. A. 951.

of free speech. In an Oregon case,⁹⁷ although the threats of boycott to plaintiff's customers caused their withdrawal, injunction was refused on ground of not being an irreparable injury. Another court says no injunction will lie unless the boycott interferes with a relation of contract between customer and plaintiff.⁹⁸ These latter boycott cases are proceeding on the same line as the threat-to-strike cases, of which National Protective Association (*supra*) is the type. It is the question of drawing the line between fair and unfair competition. Some recent writers and judges have asserted that the line is drawn more rigidly against labor combinations in competition with capital, than in case of conflict of combinations of capital.⁹⁹

The injunction against a combination of members of a labor union for boycotting is usually granted, without regard to whether there is any contract relation between the customer and plaintiff.¹⁰⁰

Whether the boycott is in the form of circulars, letters, advertisements, placards or banners, or any other means of communication of defendants' purpose, the same test applies—is there coercion of a third person's will to the injury of the plaintiff?¹⁰¹ Where mere in-

⁹⁷ Longshore Printing Co. v. Howell (1894), 26 Or. 505, 46 Am. St. Rep. 640, 38 Pac. 547, 28 L. R. A. 464. Here the court said: "The plaintiff may have been much annoyed, and at times viciously harassed by defendants, yet there is no such persistent, aggressive and virulent boycott now in progress as to justify the court in saying the plaintiff's business is or is about to be irreparably injured."

⁹⁸ Guethler v. Altman, 26 Ind. App. 587, 84 Am. St. Rep. 313, 60 N. E. 355.

⁹⁹ W. H. Dunbar in 13 Law Quar. Rev. 348; Chas. N. Gregory in 11 Harv. Law Rev. 487.

¹⁰⁰ Plant v. Woods (1900), 176 Mass. 492, 79 Am. St. Rep. 330, 57 N. E. 1011, 51 L. R. A. 339.

¹⁰¹ In Barr v. Essex Trades Council (1894), 53 N. J. Eq. 101, 30 Atl. 881, an injunction was issued against defendants, "restraining them from distributing or circulating any circulars, . . . containing

formation is conveyed or persuasion used, no injunction should be granted on the ground of the means used.

§ 610. **The Blacklist.**—The form of boycott known as the *blacklist* seems to be treated with more consideration when used by capital than when used by combinations of labor. Thus, where a mill corporation sent out a blacklist of striking employees to other mill corporations, and there was a combination not to employ plaintiffs, except at the old price, in their old places, no injunction was allowed.¹⁰² An employer may keep a blacklist and show it to other employers.¹⁰³ But where members of a union combine and threaten to blacklist a non-union man, it is held to be a form of intimidation and may be enjoined.¹⁰⁴ The distinction, though not often drawn, would seem to be the same as in the other forms of boycott and the strike, *i. e.*, where the blacklist is an instrument of intimidation it should be enjoined, but where it is a means only of information it is a legitimate weapon of competition.

§ 611. **Grounds for the Injunction.**—The grounds that determine whether an injunction will be granted or refused do not lie to any great extent in the element of combination or conspiracy *per se*, but in the effect upon

appeals or threats against the 'Newark Times,' or the complainants, its publishers, with the design and tending to interfere with their business in publishing said paper, and from making any threats or using any intimidation to the dealers or advertisers in such newspaper tending to cause them to withdraw their business from said newspaper."

¹⁰² *Worthington v. Waring* (1892), 157 Mass. 421, 34 Am. St. Rep. 294, 32 N. E. 744, 20 L. R. A. 342.

¹⁰³ *Boyer v. Western Union Tel. Co.*, 124 Fed. 246.

¹⁰⁴ *Chesapeake & Ohio Co. v. Fire Creek Coal & Coke Co. et al.*, 119 Fed. 942; *Trollope & Sons v. London Trade Fed.*, 11 The Times L. R. 228.

the plaintiff's rights; although the law will sometimes take cognizance of acts done by a combination of persons which would not give rise to a cause of action if done by an individual, because of the power residing in numbers to do harm.¹⁰⁵ The main question the courts seek to answer is, has the plaintiff a right, as to continue in employment or be employed or have trade flow freely to him, which right is being infringed unlawfully by defendant's conduct? These rights are usually found or assumed to be threatened in a way for which the law can give no adequate remedy.¹⁰⁶ To a large extent, in granting the injunction in these cases, the courts have not gone into the question whether the injury was irreparable, but assumed that as matter of course. Thus an injunction was granted, recently, against defendants boycotting plaintiff, on the ground of unlawful interference with plaintiff's property rights, with no mention that the injury was irreparable.¹⁰⁷ And this is true in many cases.

§ 612. Destruction of Complainant's Business or Vocation.

This attitude doubtless arises from the consideration that the nature of the wrong threatens the destruction

¹⁰⁵ *Hopkins v. Oxley Stave Co.*, 83 Fed. 912, 28 C. C. A. 99.

¹⁰⁶ In *Reynolds v. Everett*, 144 N. Y. 189, 195, 39 N. E. 72, 26 L. R. A. 591, the true rule was given: "Mere apprehension of some future acts of a wrongful nature, which might be injurious to the plaintiffs, was not a sufficient basis for insisting upon the preventive remedy of a final injunction. Such remedy becomes a necessity only when it is perfectly clear upon the facts, that, unless granted, the complainant may be irreparably injured, and that he can have no adequate remedy at law for the mischief occasioned"; *Atkins et al. v. W. A. Fletcher Co.*, 65 N. J. Eq. 658, 55 Atl. 1074; *Beaton et al. v. Tarrant* (1902), 102 Ill. App. 124.

¹⁰⁷ *Gray v. Building Trades Council*, 91 Minn. 171, 103 Am. St. Rep. 477, 97 N. W. 663, 667, 63 L. R. A. 753; *Plant et al. v. Woods et al.* (1900), 176 Mass. 492, 79 Am. St. Rep. 330, 57 N. E. 1011, 51 L. R. A. 339.

of plaintiff's property in his business or right to work, or at least a serious injury for which the remedy at law is inadequate.¹⁰⁸ This attitude has led to the practice of granting an injunction although in strictness the injury was not irreparable,¹⁰⁹ particularly in the federal courts, where the injunction seems to be granted over-readily.

In *Printing Co. v. Howell*,¹¹⁰ an extreme view the other way was taken. A printer's union had induced plaintiff's men to quit, had by threats of boycott caused loss of many customers, and it threatened to carry the boycott "to the death." The court refused the injunction on the ground that the injury was not irreparable, and that an injunction should not issue unless the injury was irreparable. In most jurisdictions an injunction would have issued here.¹¹¹

108 *Flaccus v. Smith* (1901), 199 Pa. St. 128, 85 Am. St. Rep. 779, 48 Atl. 894, 54 L. R. A. 640. The court said: "The interference [with plaintiff's business] was injurious and if continued would utterly ruin his business. The damages resulting from such an injury are incapable of ascertainment at law, and justice demands that specific relief be furnished in a court of equity on the ground of lack of a plain and adequate remedy at law" (p. 136). The injury was persuasion of apprentices to break their contracts with plaintiffs.

109 *Vegelahn v. Guntner*, 167 Mass. 92, 57 Am. St. Rep. 443, 44 N. E. 1077, 35 L. R. A. 722, where a peaceful patrol of two men in front of plaintiff's place of business was enjoined.

110 *Longshore Printing Co. v. Howell* (1894), 26 Or. 505, 46 Am. St. Rep. 640, 38 Pac. 547.

111 *Longshore Printing Co. v. Howell* (1894), 26 Or. 505, 46 Am. St. Rep. 640, 38 Pac. 547. The court, at page 548, suggests the following rule: "Recent decisions sustain the doctrine that where two or more persons combine and confederate together for the purpose of destroying or injuring the business of another, or doing violence to his property or property rights, and it is clearly made to appear that the injury is threatened and imminent, and will become irreparable to the suitor, an injunction will lie to restrain the conspiracy." See, also, *Marx & Haas Clothing Co. v. Watson et al.* (1902), 168 Mo. 133, 90 Am. St. Rep. 440, 67 S. W. 391, 56 L. R. A. 951.

§ 613. **Multiplicity of Suits.**—Multiplicity of suits from the number of defendants in these cases is often given as a ground for the injunction,¹¹² but in all cases found that is not the sole ground. Likewise, the insolvency of defendants, while suggested with other grounds, has not of itself been made the sole ground for an injunction.¹¹³ “The fact that the defendants are without means does not in any way change the complexion of the case” the court observed in refusing an injunction against a boycotting circular.¹¹⁴

§ 614. **Continuing Injury.**—Continuing interference with plaintiff’s business is a frequent ground, or in general, a continuing injury to the plaintiff’s right of person or property, as the remedy at law would be inadequate.¹¹⁵

§ 615. **Nuisance.**—Nuisance may be a ground for the injunction in certain of these cases,¹¹⁶ as, for instance,

¹¹² *Blindell v. Hogan* (C. C.), 54 Fed. 40 (1893); *Barr v. Essex Trades Council* (1894), 53 N. J. Eq. 101, 30 Atl. 881; *Frank et al. v. Herold et al.* (1901), 63 N. J. Eq. 443, 53 Atl. 152; *Coeur d’Alene etc. Co. v. Miners’ Union*, 51 Fed. 260, 19 L. R. A. 382.

¹¹³ *Brace Bros. v. Evans*, 3 Ry. & Corp. Law Jour. 561; *Heilman v. Union Canal Co.* (1860), 37 Pa. St. 100; *Coeur d’Alene etc. Co. v. Miners’ Union*, 51 Fed. 260, 19 L. R. A. 382; *Kirkpatrick v. McDonald*, 11 Pa. St. 387.

¹¹⁴ *Marx & Haas Clothing Co. v. Watson et al.* (1902), 168 Mo. 133, 149, 90 Am. St. Rep. 440, 67 S. W. 391, 56 L. R. A. 951. The court remarked: “The authority to enjoin finds no better harbor in the empty pocket of the poor man than in the full pocket of the rich man.”

¹¹⁵ *Coeur d’Alene Min. Co. v. Miners’ Union*, 51 Fed. 260, 19 L. R. A. 382. In *Union Pac. Co. v. Ruef*, 120 Fed. 102, the court observed: “Persistent, continual and objectionable persuasion by numbers is of itself intimidating,” and can be enjoined.

¹¹⁶ *Sherry v. Perkins*, 147 Mass. 212, 9 Am. St. Rep. 689, 17 N. E. 307; *American Steel & Wire Co. v. Wire Workers’ Union* (1898), 90 Fed. 608, 615 (court held that blocking the street with bodies of

an obstruction to access to plaintiff's property, or an obstruction of the highway so as to interfere with plaintiff's right to travel freely to his work, or to seek work. In *Vegelahn v. Guntner*, there was a patrol of two men placed in front of plaintiff's premises, and the court granted an injunction, giving as one of its reasons: "The patrol was an unlawful interference both with plaintiff and his workmen, and when instituted for the purpose of interfering with his business, it became a private nuisance."¹¹⁷

§ 616. Interference by Intimidation with Legal Right.—

The injunction may be granted simply because of the right invaded, without regard to the fact of numbers or of combination.¹¹⁸ This is clearly the ground of a large proportion of the cases of injunction against combinations of labor unions. But the right to the injunction may be due to the mere presence of numbers, as thus constituting a nuisance, as in obstructing access to plaintiff's premises,¹¹⁹ or as creating the element of intimidation from the mere presence of numbers or from the combination of many.¹²⁰ The *cru*x of the mat-

men who interfere with egress and ingress to plaintiff's property was a nuisance and would be enjoined); *Coeur d'Alene Con. & Min. Co. v. Miners' Union*, 51 Fed. 260, 19 L. R. A. 382; *Walker v. Cronin*, 107 Mass. 555; *Murdock v. Walker*, 152 Pa. St. 595, 34 Am. St. Rep. 678, 25 Atl. 492; *Lyon v. Wilkins*, [1896] 1 Ch. 811.

¹¹⁷ *Vegelahn v. Guntner*, 167 Mass. 92, 57 Am. St. Rep. 443, 44 N. E. 1077, 35 L. R. A. 722.

¹¹⁸ *Emaek v. Kane*, 34 Fed. 46.

¹¹⁹ *Coeur d'Alene Min. Co. v. Miners' Union*, 51 Fed. 260, 19 L. R. A. 382.

¹²⁰ *Giblan v. Amal. Labor Union* [1903], 2 K. B. 600; *Standard Tube & Fork Co. v. International Union of Bicycle Workers' etc.* (1899), 7 Ohio N. P. 87. The court dissolved a temporary injunction on proof that the strikers had used no force or threats, but had patrolled the premises to the number of seven or eight men, trying to persuade the workmen to strike, but the court said: "They

ter, however, is not in the combination or the numbers, but in the effect, the intimidation. This intimidation might as well come from a single individual, if he were powerful enough.¹²¹ It is this element of intimidation arising out of mere numbers or of a combination of numbers to plaintiff's detriment that often makes that actionable or enjoinable which would not be when done by a single individual,¹²² for then plaintiff, customer or employer, ordinarily would not be coerced through fear.

§ 617. **The Combination may be Enjoined as a Conspiracy.** The injunction is often rested on the ground of restraining a conspiracy.¹²³ But whether there is a conspiracy or not is to be answered by looking at the questions already discussed. For the test of a conspiracy is (1) whether the purpose of the agreement of the combination is unlawful, or (2) whether the means used to carry out the agreement are unlawful.¹²⁴ Either of

could not assemble in such numbers as to overawe and terrify or bear down the judgment of the men going to work."

¹²¹ *Mogul Steamship Co. v. McGregor*, [1892] App. Cas. 25. *

¹²² *Quinn v. Leathem*, [1901] App. Cas. 495; *Hopkins v. Oxley Stave Co.*, 83 Fed. 912, 921, 28 C. C. A. 99.

¹²³ *State v. Glidden*, 55 Conn. 46, 3 Am. St. Rep. 33, 8 Atl. 890; *State v. Stewart*, 59 Vt. 273, 59 Am. Rep. 710, 9 Atl. 559; *State v. Dyer*, 67 Vt. 690, 32 Atl. 814; *Casey v. Typographical Union*, 45 Fed. 135, 12 L. R. A. 193; *Pettibone v. United States*, 148 U. S. 197, 13 Sup. Ct. 542, 37 L. ed. 419; *United States v. Kane*, 23 Fed. 748; *New York Phonograph Co. v. Jones*, 123 Fed. 197; *Thomas v. Cincinnati etc. Ry.*, 62 Fed. 803; *My Maryland Lodge v. Adt (Md.)*, 59 Atl. 721; *Union Pac. Co. v. Ruef*, 120 Fed. 102; *Hopkins v. Oxley Stave Co.*, 83 Fed. 912, 28 C. C. A. 99; *Erdmann v. Mitchell*, 207 Pa. St. 79, 99 Am. St. Rep. 783, 56 Atl. 327; *Allis Chalmers Co. v. Reliable Lodge*, 111 Fed. 264; *Elder v. Whitesides*, 72 Fed. 724; *Reynolds v. Everett*, 67 Hun, 294, 22 N. Y. Supp. 306; *Longshore Printing Co. v. Howell*, 26 Or. 527, 28 L. R. A. 464; *Davis v. Zimmerman*, 91 Hun, 489, 36 N. Y. Supp. 303; the list could be multiplied indefinitely.

¹²⁴ In *Mogul Steamship Co. v. McGregor*, [1892] App. Cas. 25, 31, Lord Chancellor Halsbury said: "Intimidation, violence, molestation,

these conditions makes the agreement into a conspiracy which may be enjoined, where property rights are threatened with great injury. But adding the word "conspiracy" does not aid to any great extent. The court in *Hopkins v. Stave Co.* says: "A conspiracy to compel a manufacturer to abandon the use of a valuable invention bears no resemblance to a combination among laborers to withdraw from a given employment as a means of obtaining better pay." Here the purpose was lawful, to obtain better wages, by getting the employer not to use hooping machines. But the means were unlawful, the court said; the means were in the use of the boycott as a weapon upon complainant's customers. So it may be said that combinations as such are not unlawful, and to determine whether the combination amounts to a conspiracy which may be enjoined, it is necessary to see whether the means used, or the purpose in view, would be ground for an injunction.¹²⁵ In *Longshore Printing Co. v. Howell*, an injunction against a conspiracy to boycott plaintiff was refused on the ground that the injury was not irreparable.

§ 618. **Mandatory Injunction.**—It seems clear that a mandatory injunction could seldom apply to a combination of labor, as the prohibitive element of personal ser-

or procuring people to break contracts are all unlawful acts; a combination to procure them to do such acts is a conspiracy and unlawful."

¹²⁵ *Crump v. Commonwealth* (1888), 84 Va. 927, 10 Am. St. Rep. 895, 6 S. E. 620. In *Clemmitt et al. v. Watson*, 14 Ind. App. 38, 42 N. E. 367, it was held that a mere agreement of two or more employees of a coal mine to quit work at the mine if a certain employee is not discharged, followed by his quitting, or by the employers' refusal to discharge, by reason of which the work at the mine is stopped, and such employee thrown out of employment, does *not* constitute a conspiracy.

vice is ever present. The decree by Jenkins, J.,¹²⁶ giving an injunction which prohibited members of a combination from quitting in a body the service of a railroad which was in the hands of a receiver, was evidently contrary to the equitable principle that compulsory service will never be required by a decree of equity. This view was taken in *Arthur v. Oakes*,¹²⁷ which reversed the decree of Judge Jenkins on that point. But so long as workmen continue in the service of a railroad, equity will by mandatory injunction compel them to accept and transmit any and all interstate traffic, and will not permit them to boycott an offending railroad.¹²⁸ While equity will not compel workmen to remain in service, it will enjoin a labor union official from ordering a strike when the effect would be to interfere with interstate commerce, the only ground for the strike being sympathy with strikers on another road.¹²⁹ Equity will not permit men in the railway service to leave their service at a time dangerous to the public.¹³⁰

¹²⁶ *Farmers' Loan & Trust Co. v. Northern Pac. R. R. Co.* (1894), 60 Fed. 803.

¹²⁷ *Arthur v. Oakes*, 63 Fed. 310, 11 C. C. A. 209, 25 L. R. A. 414.

¹²⁸ *Southern Cal. Ry. Co. v. Rutherford*, 62 Fed. 796; *Toledo A. A. & N. M. Ry. Co. v. Pennsylvania Co. et al.*, 54 Fed. 730, 19 L. R. A. 387.

¹²⁹ *Ibid*; *Wabash etc. Ry. Co. v. Hannahan*, 121 Fed. 563. The distinction was here made that if the order to strike given by officers of a labor union, where it would interfere with interstate commerce and the United States mails, contemplated the use of *unlawful means*, an injunction would be given. A decree for a permanent injunction was here denied, as only a *peaceable* strike was contemplated; *Thomas v. Cincinnati etc. Ry. Co.*, 62 Fed. 803.

¹³⁰ *Toledo A. A. & N. M. Ry. Co. v. Pennsylvania Co. et al.*, 54 Fed. 746, 756, 19 L. R. A. 395. The injunction was issued against certain railroads and their employees and agents, enjoining them from refusing to accept interstate freight from complainant. Judge Ricks said: "While equity will not compel personal service, it does undertake to compel you [employees] to perform your whole duty, while

§ 619. **Where Act Enjoined is a Crime.**—It is often offered as an objection to an injunction that the act threatened is a crime, but it is everywhere the rule, following the general principle in equity, that where there is ground for equitable interference, as, where an irreparable injury is threatened to property, the fact that the act is also a crime is not a reason for refusing an injunction.¹³¹ But equity has no criminal jurisdiction, and will never enjoin a combination to commit a crime simply for the purpose of preventing a crime.¹³²

§ 620. **Against Whom does the Injunction Run.**—An important question in attempting to prevent acts by combinations of labor is, against whom must the injunction lie? whether persons not named as parties defendant

such relations continue. . . . You cannot always choose your own time and place for terminating the service.”

¹³¹ *Arthur v. Oakes*, 63 Fed. 310, 11 C. C. A. 209, 25 L. R. A. 414; *Vegeahn v. Guntner*, 167 Mass. 92, 57 Am. St. Rep. 443, 44 N. E. 1077, 35 L. R. A. 722. Here the act enjoined was a nuisance. In *Allis Chalmers Co. v. Reliable Lodge*, 111 Fed. 264, an injunction was granted against a criminal conspiracy by workmen; *Hamilton-Brown Shoe Co. v. Saxey*, 131 Mo. 212, 52 Am. St. Rep. 622, 32 S. W. 1106; *Toledo A. A. & N. M. Ry. Co. v. Pennsylvania Co.*, 54 Fed. 730, 19 L. R. A. 387 (injunction where irreparable and continuing injury to property is threatened, even though an indictment would lie); *United States v. Elliott*, 62 Fed. 801; *Underhill v. Murphy et al.* (1904), 25 Ky. Law Rep. 1731, 78 S. W. 482 (the lower court refused an injunction on the ground that threatened assaults of strikers were criminal in their nature. Court of appeals reversed this decree, and granted the injunction on ground that the threatened assaults, by intimidating plaintiff's workmen, operated to destroy his business); *Cumberland Glass Mfg. Co. v. Glass Blowers' Assn.*, 59 N. J. Eq. 49, 46 Atl. 208 (equity will enjoin a continuing trespass on property, although the act may involve crime); *Cranford v. Tyrrell*, 128 N. Y. 341, 28 N. E. 514; *Consolidated Steel and Wire Co. v. Murray et al.*, 80 Fed. 811; *Elder v. Whitesides*, 72 Fed. 724. On the general principle, see Vol. I, chapter XXI.

¹³² *Hamilton-Brown Shoe Co. v. Saxey*, 131 Mo. 212, 52 Am. St. Rep. 622, 32 S. W. 1106.

may be named in the injunction, and whether persons not named at all may be subject to the injunction. Certain cases in the federal courts have answered both of these questions affirmatively. It is undoubtedly sound to make the injunction run against persons not named as parties, if they are somewhat definitely determined by the writ itself.¹³³ But the sweeping injunction¹³⁴ that includes all who cross its path, though neither parties defendant nor named in the injunction, is properly

¹³³ *In re Lennon* (1896), 166 U. S. 548, 554, 17 Sup. Ct. 658, 41 L. ed. 1110, affirming *Toledo A. A. & N. M. Ry. Co. v. Pennsylvania Co.*, 54 Fed. 746, 756, 19 L. R. A. 395, the rule is thus given: "The fact that petitioner was not a party to such suit, nor served with process of subpoena, nor had notice of the application made by complainant for the mandatory injunction, nor was served by the officers of the court with such injunction, are immaterial, so long as it is made to appear that he had notice of the issuing of the injunction by the court. To render a person amenable to an injunction, it is neither necessary that he should have been a party to the suit in which the injunction was issued, nor to have been actually served with a copy of it, so long as he appears to have had actual notice of it"; citing *High on Injunctions*, § 1444, etc. Similarly, see *Ex parte Richards*, 117 Fed. 658; *American Steel & W. Co. v. Wire etc. Union*, 90 Fed. 598; *Toledo A. A. & N. M. Ry. Co. v. Pennsylvania Co.*, 54 Fed. 746, 19 L. R. A. 395; *Toledo A. A. & N. M. Ry. Co. v. Pennsylvania Co.*, 54 Fed. 730, 19 L. R. A. 387; *Union Pac. Co. v. Ruef*, 120 Fed. 102, 109; *Anderson v. Indianapolis Drop Forging Co.* (Ind. App.), 72 N. E. 277.

¹³⁴ *In Conkey Co. v. Russel*, 111 Fed. 417, 424, the court said: "The court has jurisdiction to do that thing [punish for contempt] not on the ground that Mr. Bessette and the other conspirators who are named, but are not parties to the original bill, are directly restrained, but because they have made themselves amenable to the process for contempt by combining and confederating with those who were enjoined, and by aiding and assisting them in the violations of the injunction." See an article by W. H. Dunbar, in 13 *Law Quar. Rev.* 348, for a criticism on this sweeping reach of the injunction. He says the result at present is that a court of equity may, *ex parte*, upon motion of the plaintiff, issue an order restraining all persons from doing specific acts, although such persons are not parties to the cause, and in no way connected with it, and cannot be identified except by the fact of their violating the injunction.

criticised.¹³⁵ In this country an injunction against a trade union by its name is nugatory, as there is no form of incorporation, although in England it is now recognized that by the acts of Parliament the union is an incorporation for certain purposes, including that of liability in its trade-union name.¹³⁶ In this country the injunction is almost universally directed against the officers and members of the union, as individuals acting in combination. As it is impossible to name all the members of a union in a bill for an injunction, it is enough to name as parties the officers of the union and a representative portion of the members, and then let the bill call for injunction against them and all other members not named.

§ 621. Preliminary Injunction Against a Combination.—The usual rule as to preliminary injunctions applies as against a combination of labor or capital. This rule is stated by Sanborn, J.,¹³⁷ and is quoted with approval in *Harriman v. Northern Securities Co.*,¹³⁸ viz.: “A preliminary injunction maintaining the *status quo* may properly issue whenever the questions of law or of fact to be ultimately determined are grave and difficult, and injury to the moving party will be immediate, certain and great if it is denied, while the loss or inconvenience to the

¹³⁵ 8 Harv. Law Rev. 228.

¹³⁶ *Taff Vale Ry. Co. v. Amalgamated Society of Railway Servants*, [1901] App. Cas. 426 (case said that a trade union, registered under the trade-union acts of 1871 and 1876, could be sued in its trade-name. The injunction granted ran against the “society, their servants, agents, and others acting under their authority”).

¹³⁷ *Denver & R. G. R. R. Co. v. United States*, 124 Fed. 156, 161.

¹³⁸ *Harriman v. Northern Securities Co.*, 132 Fed. 464; *Gulf Bag Co. v. Suttner et al.* (1903), 124 Fed. 467. The evidence as to acts of intimidation was in conflict, but the defendants had gathered about the premises of plaintiff, and the police were needed to preserve order. The court granted the preliminary injunction until the case could be heard on its merits.

opposing party will be comparatively small if it is granted."

§ 622. **Combinations in Restraint of Interstate Commerce.** A combination of labor to use such means to attain their purpose that the result is an obstruction of the United States mails and an interference with interstate commerce, constitutes a conspiracy and will be enjoined.¹³⁹ The inferior federal courts place the power to enjoin the interference with interstate traffic entirely on the act of 1890,¹⁴⁰ which act expressly gives the

¹³⁹ *In re Charge to the Grand Jury* (1894), 2 Fed. 828 (the court said: "If it shall appear to you that two or more persons, corruptly or wrongfully, agreed with each other that the trains carrying the mails and interstate commerce should be forcibly arrested, obstructed, and restrained, such would clearly constitute a conspiracy"); *United States v. Elliott*, 64 Fed. 27, 30; *Thomas v. Cincinnati, N. O. & T. P. Ry. Co.*, 62 Fed. 803; *United States v. Workman's Amal. Council*, 54 Fed. 994, 26 L. R. A. 158; *In re Debs*, 158 U. S. 564, 15 Sup. Ct. 900, 39 L. ed. 1092 ("if two or more men, no matter what their positions in the railway company may have been, wrongfully and corruptly agreed among themselves either for the purpose of creating public sympathy in a threatened strike, or for any other purpose, that they would cause the mail trains and trains carrying interstate commerce to be stopped, and did acts in pursuance of that agreement, they are guilty of conspiracy." The court continued, if two or more men, in a similar manner, "agreed . . . they would discharge men from their employ, who otherwise would not be discharged, intending that such discharge should stop the running of the mail or interstate commerce trains, and thereby arouse public indignation, they would be guilty of a conspiracy"); *Toledo A. A. & N. M. Ry. Co. v. Pennsylvania Co.*, 54 Fed. 746, 19 L. R. A. 395.

¹⁴⁰ Act of 1890, 26 Stats. 209; *United States v. Elliott*, 64 Fed. 27, 30; *United States v. Agler*, 62 Fed. 824. *In re Charge to the Grand Jury*, 62 Fed. 823, 801, the court states: "The act of 1890 was a law that enlarged the jurisdiction of the federal courts, and authorized them to apply the restraining power of the law for the purpose of checking and arresting all lawless interference with the peaceable and orderly carriage of mails, and with the peaceable and orderly conduct of railroad business between the states." "Any physical interference, therefore, which has the effect of restraining any passenger, car, or thing constituting an element of interstate commerce,

power to prevent by injunction a conspiracy to interfere with interstate commerce.¹⁴¹ This act of 1890 was directed against combinations of capital, but from the first, the federal courts held that it included combinations of labor as well.¹⁴² One federal judge declared that before the act of 1890 a federal court could not have enjoined such an interference.¹⁴³ But, in the leading case of *United States v. Debs*,¹⁴⁴ the supreme court

forms the foundation for this offense [conspiracy against interstate commerce]. But, to complete the offense, as also that of conspiracy to obstruct the mails, there must exist, in addition to the overt act and purpose, the element of criminal conspiracy. What is criminal conspiracy? If it shall appear to you that any two or more persons corruptly and wrongfully agreed with each other that the train carrying the mails or interstate commerce should be forcibly arrested, obstructed, and restrained, such would clearly constitute a conspiracy. If it shall appear to you that two or more persons corruptly or wrongfully agreed with each other that the employees of the several roads carrying the mails and interstate commerce should quit, and that successors should by threats, intimidation, or violence, be prevented from taking their places, such would constitute a conspiracy."

141 Act of July 2, 1890, 26 Stats. 209. "The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act. . . . When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing of the case, and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises."

142 *United States v. Elliott*, 64 Fed. 27, 30; *United States v. Agler*, 62 Fed. 824.

143 In *United States v. Agler*, 62 Fed. 824, Baker, J., says: "Prior to the second day of July, 1890, . . . the United States . . . had no power . . . to go into the courts of equity of the United States, and invoke the aid of those courts, by their restraining power, to prevent interference with the carriage of the mails or with the carriage of interstate commerce. Prior to that time the sole remedy was on the criminal side of the court."

144 *United States v. Debs*, 158 U. S. 564, 581, 582, 586, 599, 15 Sup. Ct. 900, 39 L. ed. 1092. (Page 581:) "As, under the constitution, power over interstate commerce and the transportation of the mails is vested in the national government, and Congress, by virtue of such grant, has assumed actual and direct control, it follows that the

took a much larger view, and held that where officials and members of a labor union, in order to enforce a boycott against the Pullman Car Co., conspired to obstruct trains carrying mail and interstate freight and passengers, and to interfere with the service generally, an injunction would be granted on the broad ground of an interference with the exercise of the national powers of the federal government; that the United States had a property in its mails which gave it a technical right to an injunction against their obstruction. But further than this, any obstruction of a national way of commerce was a nuisance and an interference with a sovereign power and could be enjoined by the equitable arm of the government. It did not base its decision on the express act of 1890 which the circuit court had used as its authority to grant the injunction.

§ 623. Combinations of Capital—Boycotting Combinations.

The general results found in reference to injunctions against combinations of labor apply to combinations of capital in analogous cases. Thus, where the basis of the conspiracy is the illegal means of the boycott of intimidation (though moral intimidation only) by a combination of capital, on principle an injunction should

national government may prevent any unlawful and forcible interference therewith." This may be done by all the armed force of the nation. But it is not the only means. Like any public nuisance, it may be abated not only by force, but by peaceable means "by the exercise of their powers by the writ of injunction." . . . (Page 586:) The national government "is charged, therefore, with the duty of keeping those highways of interstate commerce free from obstruction." It is competent for the nation "to remove all obstructions upon highways, natural and artificial, to the passage of interstate commerce or the carrying of the mail." (Page 599:) "If such [obstructions] are found to exist, or threaten to occur, [it is competent] to invoke the powers of those courts to remove or restrain such obstructions; that the jurisdiction of courts to interfere in such matters by injunction is one recognized by indubitable authority."

lie if the injury is continuing or irreparable, equally as against a combination of labor. Thus, where manufacturers and dealers in plumbers' supplies agreed with an association of master-plumbers not to sell to any master-plumber not in the combination, and that the association should boycott any dealer found selling to a non-member, an injunction was granted.¹⁴⁵ There are many decisions to the same effect. In *Jackson v. Stanfield*,¹⁴⁶ the court said: "The great weight of authority supports the doctrine that where the policy pursued against a trade or business is of a menacing character, calculated to destroy or injure the business of the person so engaged, either by threats or intimidation, it becomes unlawful." . . . "It is not a mere passive, let-alone policy, a withdrawal of all business relations, inter-

¹⁴⁵ *Walsh v. Association of Master Plumbers* (1902), 97 Mo. App. 280, 71 S. W. 455.

¹⁴⁶ *Jackson et al. v. Stanfield et al.* (1893), 137 Ind. 592, 608, 36 N. E. 345, 37 N. E. 14, 23 L. R. A. 588 (here the court said: "A conspiracy formed and intended directly or indirectly to prevent the carrying out of any lawful business, or to injure the business of any one by wrongfully preventing those who would be customers from buying by threats or intimidation, is in restraint of trade and unlawful"); *Boutwell v. Marr* (1899), 71 Vt. 1, 76 Am. St. Rep. 746, 42 Atl. 607, 43 L. R. A. 803; *Bowen v. Matheson* (1867), 96 Mass. 499; *Payne v. The Western & Atl. R. R. Co.* (1884), 13 Lea (Tenn.), 507, 49 Am. Rep. 666; *Aikens v. Wisconsin* (Nov., 1904), 195 U. S. 194, 25 Sup. Ct. 13 (by statutes of Wisconsin of 1898, § 4466a, a malicious combination to injure another is declared unlawful. Certain newspapers combined to injure a rival newspaper by refusing space in their journals to anyone advertising in the rival journal; they were indicted under the statute of 1898. The United States supreme court upheld the statute in above case on appeal); *Brown v. Jacobs Pharmacy Co.* (1902), 115 Ga. 429, 90 Am. St. Rep. 126, 41 S. E. 553, 57 L. R. A. 547; *Delz v. Winfree* (1891), 80 Tex. 400, 26 Am. St. Rep. 755, 16 S. W. 111; *Olive v. Van Patten* (1894), 7 Tex. Civ. App. 630, 25 S. W. 428; *Webb v. Drake* (1900), 52 La. Ann. 290, 26 South. 791; *Transportation Co. v. Standard Oil Co.* (1902), 50 W. Va. 611, 88 Am. St. Rep. 895, 40 S. E. 591, 56 L. R. A. 804, first count; *Ertz v. Produce Exchange* (1900), 79 Minn. 140, 79 Am. St. Rep. 433, 81 N. W. 737, 48 L. R. A. 90.

course and fellowship that creates the liability, but the threats and intimidation shown in the complaint."

§ 624. **The Boycott is the Unlawful Element.**—The essential element making the combination unlawful is its boycotting feature. There are authoritative cases *contra* to these.¹⁴⁷ Thus, where a combination of master-plumbers sent notices to wholesale dealers not to sell plumbers' supplies to non-members of the association on penalty of the withdrawal of the patronage of members, the court refused to grant an injunction, saying the interference with complainant's trade was justified as fair competition, and trade should be free so long as the methods were not of fraud, misrepresentation, intimidation, coercion, obstruction, or molestation of a rival.¹⁴⁸ The court thus refused to acknowledge that the moral intimidation involved in the threat of the combination to cause business loss to the wholesale dealers in order to coerce them amounted to an intimidation it would consider. The leading case of this group is that

¹⁴⁷ *Macauley Bros. v. Tierney et al.* (1895), 19 R. I. 255, 61 Am. St. Rep. 770, 33 Atl. 1, 37 L. R. A. 455; *Bohn Mfg. Co. v. Hollis*, 54 Minn. 223, 40 Am. St. Rep. 319, 55 N. W. 1119, 21 L. R. A. 337. In *Hopkins v. Oxley Stave Co.*, 83 Fed. 912, 936, 28 C. C. A. 99, which enjoined a labor union from effecting its purpose by means of threatened boycott to customers, Caldwell, J., in a vigorous dissent claimed the boycott was a legitimate weapon of competition. "It is resorted to by great corporations and trusts—the sugar trust, the meat trust, the oil trust, and scores of others. That one competing for the mastery in any line of business may rightfully resort to the boycott is established in the Steamship Mogul case"; *Scottish Co-operative Soc. v. Glasgow Fleshers' Union*, [1898] 35 Scot. L. R. 545; *Brewster v. Miller's Sons Co.* (1897), 101 Ky. 368, 41 S. W. 301, 38 L. R. A. 505; *Transportation Co. v. Standard Oil Co.* (1902), 50 W. Va. 611, 88 Am. St. Rep. 895, 40 S. E. 591, 56 L. R. A. 804, second count.

¹⁴⁸ *Macauley Bros. v. Tierney et al.*, 19 R. I. 255, 259, 61 Am. St. Rep. 770, 33 Atl. 1, 37 L. R. A. 455; *Attorney-General v. American Tobacco Co.* (1897), 55 N. J. Eq. 352, 36 Atl. 971.

of Bohn Manufacturing Co. v. Hollis.¹⁴⁹ A number of retail lumber dealers formed an association, agreeing not to deal with any wholesale dealer who should sell directly to the consumer. The plaintiff claimed their association amounted to a combination to boycott, and that he suffered from their boycott. The court refused him an injunction, holding that the association had the right to withdraw its patronage collectively, even though used as a boycotting measure of coercion. It would seem sound to draw the line where the element of boycotting came in, even though only in the form of moral intimidation through fear of loss of business.

§ 625. **Mere Loss of Business not Ground for the Injunction.**—But it is equally clear that a mere direct loss of business is no ground for objecting to a combination, as in the much cited case of John D. Park & Sons v. Druggists' Assn., where certain wholesale druggists and manufacturers of a proprietary medicine fix a price to retail the medicine and agree that the latter shall not sell to any wholesale druggist, except at retail prices, who will not join the association and maintain the price.¹⁵⁰ The injunction was denied. There was no element of boycott.¹⁵¹ It seems clear, as a general prin-

¹⁴⁹ Bohn Mfg. Co. v. Hollis, 54 Minn. 223, 40 Am. St. Rep. 391, 55 N. W. 1119, 21 L. R. A. 337.

¹⁵⁰ John D. Park & Sons Co. v. National Wholesale Druggists' Assn., 175 N. Y. 1, 67 N. E. 136.

¹⁵¹ Russell v. New York Produce Exchange, 27 Misc. Rep. 381, 58 N. Y. Supp. 842. In this case the exchange published the list of persons with whom members are forbidden to deal, and the court said no injunction would lie against it. In Francis v. Flinn, 118 U. S. 385, 6 Sup. Ct. 1148, 30 L. ed. 165, certain pilots combined and refused to pursue their calling with pilots not in the combination. No injunction was granted. See, also, Bowen v. Mattheson, 14 Allen, 499. In Dunlap's Cable News Co. v. Stone, 60 Hun, 583, 15 N. Y. Supp. 2, an injunction was refused against a news gathering association withdrawing its services from certain newspapers that were patrons of

ciple, that no injunction will be given against an injury resulting from a combination of several to withdraw from business relations with complainant, where there is no element of coercion or intimidation of complainant or of any third party in any form.¹⁵² The Mogul Steamship Co. Case¹⁵³ set an authoritative standard of what is a lawful combination in another direction. In this case a number of shipowners, in order to get control of the tea-carrying trade, combined, and depressed the freight rates so that complainant was unable to get cargoes at rates which would enable him to carry on business. The defendants also threatened to dismiss certain foreign agents if they loaded plaintiff's ship. The course of defendants was held to be fair competition. This case has been quoted with approval as setting a proper standard of fair competition in both England and the United States generally.¹⁵⁴

complainant, a rival association. The defendant withdrew its services because these newspapers violated a by-law of the association that none of its members should take news of a rival association. In refusing the injunction, the court said: "The defendants have a perfect right to limit the sale of the news which they collect to those who contract to deal exclusively with them."

¹⁵² Attorney-General v. American Tobacco Co., 55 N. J. Eq. 352, 363, 36 Atl. 971 (the court here refused an injunction to prevent a corporation withdrawing its trade from jobbers who bought of other firms, though the effect of this course of the defendants, in reality a trust of several tobacco companies organized into one corporation, was to coerce jobbers into refusing to deal with defendant's rivals. The court said: "An individual manufacturer can refuse to sell to anyone he pleases, on any terms he pleases, and can refuse to sell to anyone with whom, for his own reasons, however capricious, he does not care to deal." Had this been a combination of several corporations for this purpose, it would seem a fairly clear case of boycott); Bowen v. Mattheson, 14 Allen, 499; Downs v. Bennett, 63 Kan. 653, 88 Am. St. Rep. 256, 66 Pac. 623, 55 L. R. A. 560; Queen Fire Ins. Co. v. State, 86 Tex. 250, 24 S. W. 397, 22 L. R. A. 483.

¹⁵³ Mogul Steamship Co. v. McGregor, [1892] App. Cas. 25.

¹⁵⁴ Tannenbaum v. New York Fire Ins. Exchange, 33 Misc. Rep. 134, 68 N. Y. Supp. 342; Continental Ins. Co. v. Board of Fire Underwriters, 67 Fed. 310.

§ 626. Where the Combination is a Monopoly.—A combination of several persons or corporations to create a monopoly, which would be an illegal combination at the common law, may be restrained by injunction as a threatened danger to the public welfare. Thus, where a railroad corporation, which also virtually controlled large coal mines, leased certain coal-carrying railroads for the purpose of controlling that coal region by combining, in effect, carriers and coal producers, equity looked to the substance of the arrangement, behind the corporate forms, and enjoined the defendant companies from carrying out the plan as an attempt to create a monopoly of a staple commodity to the injury of the public welfare.¹⁵⁵

§ 627. A Combination of Capital in Restraint of Interstate Commerce is Enjoined.—An injunction against a combination of capital in restraint of interstate traffic is granted under the authority of the Interstate Commerce Act of 1890 (often called the Anti-trust Act) at the suit of the United States through its attorney-general,¹⁵⁶ but will not be granted under that act at suit of a private individual.¹⁵⁷ The combination, if it is against interstate traffic, will be enjoined without regard to whether

¹⁵⁵ *Stockton, Attorney-General, v. The Central R. R. Co., The P. R. R. Co., and The Philadelphia & Reading R. R. Co.* (1892), 50 N. J. Eq. 52, 24 Atl. 964, 17 L. R. A. 97.

¹⁵⁶ *United States v. Trans-Missouri Freight Assn.*, 166 U. S. 290, 17 Sup. Ct. 540, 41 L. ed. 1007; *United States v. Coal Dealers' Assn.*, 85 Fed. 252; *Post v. Southern Ry. Co.*, 103 Tenn. 184, 52 S. W. 301, 55 L. R. A. 481; *United States v. Hopkins*, 82 Fed. 529.

¹⁵⁷ *Post v. Southern Ry. Co.*, 103 Tenn. 184, 52 S. W. 301, 55 L. R. A. 481; *Southern Ind. Exp. Co. v. United States Express Co.*, 88 Fed. 659, affirming 92 Fed. 1022, 35 C. C. A. 172; *Gulf C. & S. F. Ry. Co. v. Miami S. S. Co.*, 86 Fed. 407, 30 C. C. A. 142; *Pidcock v. Harrington*, 64 Fed. 821. A *dictum contra*, by Taft, J., in *United States v. Addyston Pipe & Steel Co.*, 85 Fed. 271, 29 C. C. A. 141, 46 L. R. A. 122, reversing 78 Fed. 712.

the restraint is reasonable or unreasonable.¹⁵⁸ The question as to what combinations are in restraint of interstate commerce, like the larger question of what combinations are in restraint of trade, cannot be answered here. A combination of railway employees to "strike" for better wages and to "unionize" the road, though in violation of their contracts, is not a conspiracy of unlawful character or in restraint of interstate commerce and will not be enjoined.¹⁵⁹ The latest case from the supreme court decides that a combination of the great meat dealers in different states to restrict the competition of bidding on livestock and manipulate prices of fresh meat to be shipped through different states, and secure rebates from the railroads on meat so shipped, with intent to monopolize the commerce of fresh meats, is a conspiracy to monopolize the commerce of meats, in violation of the act of 1890, and will be enjoined.¹⁶⁰ Once it is determined that the combination is in restraint of commerce within the meaning of the act of 1890, an injunction issues by express provision of the act itself. It is to be observed that the federal courts adopt a narrower rule as to what is "restraint of trade" in the terms of the statute than is applied at common law.

¹⁵⁸ *United States v. Trans-Missouri Freight Assn.*, 166 U. S. 290, 17 Sup. Ct. 540, 41 L. ed. 1007; *Northern Securities Co. v. United States*, 193 U. S. 197, 24 Sup. Ct. 436, 48 L. ed. 679; *United States v. Northern Securities Co.*, 120 Fed. 721; *United States v. Joint Traffic Assn.*, 171 U. S. 505, 19 Sup. Ct. 25, 43 L. ed. 259; *Addyston Pipe & Steel Co. v. United States*, 175 U. S. 211, 20 Sup. Ct. 96, 44 L. ed. 136.

¹⁵⁹ *Wabash R. R. Co. v. Hannahan et al.*, 121 Fed. 563.

¹⁶⁰ *Swift & Co. v. United States* (Jan. 30, 1905), 196 U. S. 375, 25 Sup. Ct. 276, 49 L. ed. —, modifying a decree of injunction issued below. See 122 Fed. 529. See, also, *United States v. Hopkins*, 82 Fed. 529; *United States v. Jellico Mt. Coke & Coal Co.*, 46 Fed. 432, 12 L. R. A. 753.

§ 628. **Injunctions Against Combinations in Violation of State Trade and Commerce Statutes.**—In many states express statutes on the analogy of the federal “anti-trust” acts of 1890 have been adopted.¹⁶¹ The difficulty of applying these acts is illustrated in the suit for an injunction brought against the Northern Securities Co., for violating the statute of Minnesota prohibiting combinations in restraint of trade or commerce within the state.¹⁶² Lochren, District Judge, in the federal court refused an injunction on the ground that the Securities Co. did not interfere with trade or commerce, but was merely an investor in the shares of two railroads.¹⁶³ A directly opposite conclusion was reached upon the same set of facts and the parallel federal act of 1890 by the circuit court,¹⁶⁴ which granted an injunction against the Securities Co. This latter decision was sustained by the supreme court of the United States.¹⁶⁵

¹⁶¹ As in *Gulf, C. & S. F. Ry. Co. v. State*, 72 Tex. 404, 13 Am. St. Rep. 815, 10 S. W. 81, 1 L. R. A. 849, the combination of parallel railroad lines, some being chartered by the state, to fix rates, is a violation of the constitutional provision and will be enjoined.

¹⁶² “Anti-trust” Act of Minn., Laws 1899, p. 487, c. 359.

¹⁶³ *Minnesota v. Northern Securities Co.*, 123 Fed. 692.

¹⁶⁴ *United States v. Northern Securities Co.*, 120 Fed. 721.

¹⁶⁵ *Northern Securities Co. v. United States*, 193 U. S. 197, 24 Sup. Ct. 436, 48 L. ed. 679.

CHAPTER XXIX.

INJUNCTION: MISCELLANEOUS TORTS.

ANALYSIS.

- §§ 629-631. Libels; slander of title.
- § 629. No injunction of a libel as such, except by statute.
- § 630. Same; libel may be enjoined on other equitable grounds.
- § 631. Same; the rule in England.
- § 632. The "right of privacy."
- § 633. Injunctions to enforce the obligations of common carriers and public service corporations.
- § 634. Injunctions against certain frauds on contractual rights — "Ticket-scalpers"—Dealers in "trading stamps."
- § 635. Injunctions for the protection of electric currents.

§ 629. No Injunction of a Libel as Such Except by Statute.

A libel occupies much the same relative position as a crime in considering the remedy of injunction.¹ Equity will not restrain by injunction the threatened publication of a libel, as such, however great the injury to property may appear to be. This is the universal rule in the

¹ In *Beck v. Railway Teamsters' Union* (1898), 118 Mich. 497, 74 Am. St. Rep. 421, 77 N. W. 13, 24, 42 L. R. A. 407, the court states the law: "It is urged that courts of equity will not restrain the publication of a libel, and that this boycotting circular is a libel, the publication of which cannot be enjoined. The same claim was made that courts of equity have no jurisdiction to restrain the commission of a crime. But the answer is, and always has been, that parties cannot interpose this defense when the acts are accompanied by threats, express or covert, or intimidation and coercion, and the accomplishment of the purpose will result in irreparable injury to and the destruction of property rights The purpose of [this libelous circular] was not alone to libel complainant's business, but to use it for the purpose of intimidating and preventing the public from trading with the complainants. It called upon them to boycott them."

United States² and was formerly the rule in England.³ The present rule in England *contra* rests on statute.

§ 630. Same; Libel may be Enjoined on Other Equitable Grounds.—But while the libel as such will not be restrained, just as a crime will not be prevented by equity, yet when there is other legitimate ground for equity to issue the injunction the fact that the publication is also a libel will not prevent the injunction being issued,⁴

² In *Raymond v. Russell*, 143 Mass. 295, 58 Am. Rep. 137, 9 N. E. 544 (false reports by a mercantile agency), the court held that equity cannot “restrain by injunction representations as to character and standing of the plaintiff, or as to his property, although such representations may be false, if there is no breach of trust or of contract involved”; *Kidd v. Horry*, 28 Fed. 774; *Edison v. Edison, Jr.*, Chem. Co., 128 Fed. 957; *Emack v. Kane*, 34 Fed. 46; *United States v. Kane*, 23 Fed. 748; *Sherry v. Perkins*, 147 Mass. 212, 9 Am. St. Rep. 689, 17 N. E. 307; *Coeur d’Alene Min. Co. v. Miners’ Union*, 51 Fed. 260, 19 L. R. A. 382; *Mayer v. Journeyman Stonecutters’ Assn.*, 47 N. J. Eq. 519, 20 Atl. 492; *Francis v. Flynn*, 118 U. S. 385, 16 Sup. Ct. 1148, 30 L. ed. 165; *Miller v. Journeyman Tailors’ Assn.*, 11 Ohio Dec. 45; *Dopp v. Doll*, 13 Wkly. L. Bul. 355; *Richter v. Journeyman Tailors’ Union*, 24 Wkly. L. Bul. 189; *Baltimore Car-Wheel Co. v. Bemis*, 29 Fed. 95; *Singer Mfg. Co. v. Domestic S. M. Co.*, 49 Ga. 70, 15 Am. Rep. 674 (slander of business); *Covell v. Chadwick*, 153 Mass. 263, 25 Am. St. Rep. 625, 26 N. E. 237 (mere false statements as to character or quality of property, or title thereto, not enjoined); *Brandreth v. Lance*, 8 Paige, 24, 34 Am. Dec. 368; *Marlin Firearms Co. v. Shields*, 171 N. Y. 384, 64 N. E. 163, reversing 68 App. Div. 88, 74 N. Y. Supp. 84 (no injunction against making false statements as to plaintiff’s goods in order to coerce plaintiff into advertising); *De Wick v. Dobson*, 46 N. Y. Supp. 390, 18 App. Div. 399; *Reyes v. Middleton*, 36 Fla. 99, 51 Am. St. Rep. 17, 17 South. 937, 29 L. R. A. 66 (slander of title of real property not enjoined). All these cases must be distinguished from those of “unfair competition,” where the fraud on the public is the ground of relief: See *ante*, §§ 577-582.

³ *Prudential Assur. Co. v. Knott*, [1874] 10 Ch. App. 142.

⁴ *Emack v. Kane*, 34 Fed. 46; *Coeur d’Alene Min. Co. v. Miners’ Union*, 51 Fed. 260, 267, 19 L. R. A. 382; *Beck v. Railway Teamsters’ Union*, 118 Mich. 497, 74 Am. St. Rep. 421, 77 N. W. 13, 24, 42 L. R. A. 407; *Shoemaker v. South Bend Spark-Arrester Co.*, 135 Ind.

even if there is a constitutional provision forbidding injunction against libels, as an interference with the right of free speech.⁵ It is clear that the grounds must be more than the injury to property arising from the libelous character of the publication. Thus, the publication of a libelous circular will not be enjoined, when the injury to the property arises from the falsity of the charges. But where it tends to intimidate customers or workmen and injure plaintiff through their loss, the fact that the circular is libelous will not prevent an injunction against the circular.⁶ Lord Cairns in refusing an injunction against a libelous insurance circular said: "It is clearly settled that a court of chancery has

471, 35 N. E. 280, 22 L. R. A. 332; *Casey v. Typographical Union*, 45 Fed. 135, 12 L. R. A. 193.

⁵ *Beck v. Railway Teamsters' Union*, 118 Mich. 497, 74 Am. St. Rep. 421, 77 N. W. 13, 24, 42 L. R. A. 407; *Shoe Co. v. Saxey*, 131 Mo. 221, 52 Am. St. Rep. 622, 32 S. W. 1106.

⁶ In *Emack v. Kane*, 34 Fed. 46, the parties were manufacturers of patent slates, and the court enjoined one from sending circulars to the customers of the other, threatening them with litigation, and tending to intimidate them, and prevent their dealing with plaintiff. The circulars were not sent out in good faith, but maliciously. For further instances of the injunction of intimidating circulars, slandering the title to patent rights, see *A. B. Farquhar Co. v. National Harrow Co.*, 102 Fed. 714, 42 C. C. A. 600, 49 L. R. A. 755; *Shoemaker v. South Bend Spark-Arrester*, 135 Ind. 471, 35 N. E. 280, 22 L. R. A. 332; *Kelley v. Ypsilanti etc. Co.*, 44 Fed. 19, 10 L. R. A. 680 (*dictum*). To the effect that one sending out circulars in good faith will not be enjoined, see *Adriance, Platt & Co. v. National Harrow Co.*, 98 Fed. 118, 111 Fed. 637; *Welsbach Light Co. v. American Incandescent Lamp Co.*, 99 Fed. 501; *New York Filter Co. v. Schwarzwald*, 58 Fed. 577. For strong statements to the effect that an injunction will not issue, see *Boston Diatite Co. v. Florence Mfg. Co.*, 114 Mass. 69, 19 Am. Rep. 310; *Whitehead v. Kitson*, 119 Mass. 484; *Kidd v. Horry*, 28 Fed. 773; *Baltimore Car-Wheel Co. v. Bemis*, 29 Fed. 95. To the effect that equity will not interfere until the complainant has established his title at law, see *Flint v. Hutchinson Smoke-Burner Co.*, 110 Mo. 492, 33 Am. St. Rep. 476, 19 S. W. 804, 16 L. R. A. 243.

no jurisdiction to restrain the publication merely because it is a libel. There are publications which a court of chancery will restrain, and those publications as to which there is a foundation for the jurisdiction of the court to restrain them, will not be restrained the less because they happen also to be libelous.”⁷

§ 631. Same; The Rule in England.—Lord Cairns, in the case last cited, was stating the rule as the court of chancery worked it out. To-day in England, as a result of Parliamentary acts,⁸ equity will restrain the publication of a libel as such, *contra* to the rule recognized by Prudential Assur. Co. v. Knott.⁹ Chitty, J., in *Collard v. Marshall*, explains the change in the rule thus: “The court of chancery before the Judicature Acts had power to intervene by injunction to protect property, but not to protect character. It had no power to try a libel. Since the Judicature Act, the Chancery Division has on motion granted injunctions restraining the further publication of false statements calculated to injure a man’s trade.”¹⁰ The present rule was stated first in *Dixon v. Holden*,¹¹ and is to be found approved constantly since,¹² equity merely exercising its discretion as to issuing the injunction.

⁷ Prudential Assur. Co. v. Knott, [1874] 10 Ch. App. 142.

⁸ Judicature Act of 1873, § 25, subd. 8. Sir George Jessel rests the present doctrine on the Judicature Act, taken in conjunction with the Common-law Procedure Act of 1854. See *Quartz Hill Con. Min. Co. v. Beall*, 20 Ch. D. 501.

⁹ Prudential Assur. Co. v. Knott, *supra*.

¹⁰ *Collard v. Marshall*, [1892] 1 Ch. 571.

¹¹ *Dixon v. Holden*, L. R. 7 Eq. 488.

¹² *Thorley’s Cattle Food Co. v. Massam*, 14 Ch. D. 763; *Thomas v. Williams*, 14 Ch. D. 864; *Bonnard v. Perryman*, [1891] 2 Ch. 269; *Loog v. Bean*, 26 Ch. D. 306; *Hill v. Davies*, 21 Ch. D. 798; *Hayward v. Hayward*, 34 Ch. D. 198; *Liverpool etc. Assn. v. Smith*, 37 Ch. D. 170. For additional cases, see 4 Pom. Eq. Jur., § 1358, note 1.

§ 632. The "Right of Privacy."—Within recent years an attempt has been made to obtain recognition for a so-called right of privacy.¹³ It has been maintained, for example, that an individual has a right not to have his portrait or representation published in any form, without his consent. As yet, this doctrine has not been generally recognized; although a few cases now sustain it, and it was repudiated by a bare majority only of the New York court of appeals.¹⁴ The cases must be care-

¹³ The origin of the doctrine is said to be in an article in the Harvard Law Review, published in 1890: 4 Harv. Law Rev. 193.

¹⁴ In a leading and recent case in New York, the court, speaking by Mr. Chief Justice Parker, considered the authorities at length, and reached the conclusion that there is no such right. "The so-called right of privacy is, as the phrase suggests, founded upon the claim that a man has the right to pass through this world, if he wills, without having his picture published, his business enterprises discussed, his successful experiments written up for the benefit of others, or his eccentricities commented upon either in handbills, circulars, catalogues, periodicals, or newspapers, and, necessarily, that the things which may not be written and published of him must not be spoken of him by his neighbors, whether the comment be favorable or otherwise. . . . If such a principle be incorporated into the body of the law through the instrumentality of a court of equity, the attempts to logically apply the principle will necessarily result, not only in a vast amount of litigation, but in litigation bordering upon the absurd, for the right of privacy, once established as a legal doctrine, cannot be confined to the restraint of the publication of a likeness, but must necessarily embrace as well the publication of a word picture, a comment upon one's looks, conduct, domestic relations, or habits": *Roberson v. Rochester Folding Box Co.*, 171 N. Y. 538, 89 Am. St. Rep. 828, 64 N. E. 442, 59 L. R. A. 478. This decision, however, was by a divided court, three of seven judges dissenting.

It has been held that the widow or heirs of a deceased person cannot enjoin the publication of the portrait or exhibition of a bust of the deceased: *Schuyler v. Curtis*, 147 N. Y. 434, 49 Am. St. Rep. 671, 42 N. E. 22, 31 L. R. A. 286 (reversing 27 Abb. N. C. 387, 15 N. Y. Supp. 787, 64 Hun, 594, 19 N. Y. Supp. 264); *Atkinson v. John E. Doherty Co.*, 121 Mich. 372, 80 Am. St. Rep. 507, 80 N. W. 285, 42 L. R. A. 219.

There is a dictum in *Corliss v. E. W. Walker Co.*, 57 Fed. 434, 64

fully distinguished from those in which a property right is involved, as where a photographer in breach of trust publishes a likeness, or where a party publishes

Fed. 280, to the effect that "a private individual has a right to be protected in the representation of his portrait in any form." But when he becomes a public character, the case is different. "A statesman, author, artist, or inventor, who asks for and desires public recognition, may be said to have surrendered this right to the public." It was also held that publication of a biography of an individual will not be enjoined. For a criticism of this case and the distinction attempted, see *Roberson v. Rochester Folding Box Co.*, *supra*.

For a recognition of the right by one of the lower courts in New York (now overruled), see *Marks v. Jaffa*, 6 Misc. Rep. 290, 26 N. Y. Supp. 908. In a very recent Georgia case, the right was clearly recognized, by a unanimous court, in a suit at law for damages. The publication of the plaintiff's portrait was the wrong. The leading case of *Roberson v. Rochester Folding Box Co.*, *supra*, was considered, and expressly repudiated, the court adopting the reasoning of the dissenting opinion: *Pavesich v. New England Life Ins. Co.* (Ga.), 50 S. E. 68. The argument upholding the right is forcibly stated in the dissenting opinion of Gray, J., in the *Roberson* case. "The right of privacy, or the right of the individual to be let alone, is a personal right, which is not without judicial recognition. It is the complement of the right to the immunity of one's person. The individual has always been entitled to be protected in the exclusive use and enjoyment of that which is his own. The common law regarded his person and property as inviolate, and he has the absolute right to be let alone: *Cooley, Torts*, p. 29. The principle is fundamental and essential in organized society that every one, in exercising a personal right and in the use of his property, shall respect the rights of others. . . . When, as here, there is an alleged invasion of some personal right or privilege, the absence of exact precedent, and the fact that early commentators upon the common law have no discussion upon the subject, are of no material importance in awarding equitable relief. . . . Instantaneous photography is a modern invention, and affords the means of securing a portraiture of an individual's face and form *in invitum* their owner. . . . But if it is to be permitted that the portraiture may be put to commercial or other uses for gain, by the publication of prints therefrom, then an act of invasion of the individual's privacy results, possibly more formidable and more painful in its consequences than an actual bodily assault might be. . . . I think that the plaintiff

private letters.¹⁵ In the latter cases the right to an injunction is established. If there is such a thing as a right of privacy, an injunction is certainly a proper remedy for its protection.¹⁶

§ 633. Injunctions to Enforce the Obligations of Common Carriers and Public Service Corporations.—Common carriers and public service corporations in general owe duties to the public. Individuals are entitled to enforce these obligations, in so far as they are themselves concerned; and when the legal remedies are inadequate, equity will grant its relief. Common carriers, for example, are under an obligation to serve all persons without discrimination and for a reasonable compensation. Accordingly, shippers may enjoin the enforcement against them of unreasonable rates, in order to prevent a mul-

has the same property in the right to be protected against the use of her face for defendants' commercial purposes as she would have if they were publishing her literary compositions. The right would be conceded if she had sat for her photograph, but, if her face or her portraiture has a value, the value is hers exclusively until the use be granted away to the public. Any other principle of decision, in my opinion, is as repugnant to equity as it is shocking to reason." See the following discussions of the principle: 4 Harv. Law Rev. 193; 36 Am. Law Rev. 614, 634, 636; 34 Am. L. Reg., N. S., 134; 41 Id. 669; 1 Col. L. R. 491; 2 Id. 437; 44 Alb. L. J. 428; 55 Cent. L. J. 123; 57 Id. 361; 12 Yale L. J. 35.

In California, the right is recognized by statute, and a violation is made a misdemeanor. No provision is made for injunction. "It shall be unlawful to publish in any newspaper, handbill, poster, book or serial publication, or supplement thereto, the portrait of any living person a resident of California other than that of a person holding a public office in this state, without the written consent of such person first had and obtained; provided, that it shall be lawful to publish the portrait of a person convicted of a crime": Pen. Code, § 258.

¹⁵ See *ante*, § 576.

¹⁶ The cases cited *supra* were injunction cases, and the propriety of the remedy, if the right exists, is by them assumed.

tiplicity of suits.¹⁷ A mandatory injunction is sometimes awarded to compel a carrier to transport freight or to furnish proper transportation facilities.¹⁸ Unjust and illegal discrimination may be a reason for equitable interferences.¹⁹ Relief may also be had against a violation of duty by general public service corporations, such as gas, water, and telephone companies, when the

¹⁷ *Tift v. Southern Ry. Co.*, 123 Fed. 789; *New York Cement Co. v. Consolidated R. Cement Co.*, 178 N. Y. 167, 70 N. E. 451, and cases cited (injunction against enforcement of illegal tolls, by a canal company, plaintiff being specially injured); *Scofield v. Lake Shore etc. R. Co.*, 43 Ohio St. 571, 54 Am. Rep. 846, 3 N. E. 907. See, however, *Southern Pac. Co. v. Colorado Fuel & Iron Co.*, 101 Fed. 779, 42 C. C. A. 12 (denying power of court to determine maximum rate and to enjoin charges in excess thereof); *McNulty v. Brooklyn Heights R. Co.*, 31 Misc. Rep. 674, 66 N. Y. Supp. 57 (refusing to enjoin the enforcement of excessive fare, because no special injury to the complainant).

¹⁸ *Wells, Fargo & Co. v. Northern Pac. R. Co.*, 23 Fed. 469 (mandatory preliminary injunction to compel railroad to furnish facilities to an express company); *Butchers & Drovers' Stockyards Co. v. Louisville & N. R. Co.*, 67 Fed. 35, 14 C. C. A. 290, 31 U. S. App. 252 (requiring defendant to furnish facilities for loading and unloading livestock); *Louisville & N. R. Co. v. Pittsburg & K. Coal Co.*, 111 Ky. 960, 98 Am. St. Rep. 447, 64 S. W. 969 (mandatory injunction may issue to compel company to furnish cars to a shipper, but not when the cars would have to stand in a public street in violation of a city ordinance) See, also, *Bedford-Bowling Green Stone Co. v. Oman*, 115 Ky. 369, 73 S. W. 1038. But that a preliminary mandatory injunction cannot issue, under the decisions in New Jersey, to compel the maintenance of a railroad station at a certain point, where that is not required by statute or charter, see *Jacquelin v. Erie R. Co.* (N. J. Ch.), 61 Atl. 18 (right of complainant being a legal one and not clear and undisputed, and the appropriate remedy being *mandamus*).

¹⁹ *United States v. Michigan Cent. R. Co.*, 122 Fed. 544 (suit by government); *Memphis News Pub. Co. v. Southern R. Co.*, 110 Tenn. 684, 75 S. W. 941. But an injunction will not issue at suit of an individual to prevent the enforcement of an exclusive grant to solicit baggage: *Norfolk & W. R. Co. v. Old Dominion Baggage Co.*, 99 Va. 111, 3 Va. Sup. Ct. Rep. 55, 37 S. E. 784, 50 L. R. A. 722.

rights of the individual complainant will be affected thereby.²⁰

§ 634. Injunctions Against Certain Frauds on Contractual Rights—"Ticket-scalpers"—Dealers in "Trading Stamps."—Within recent years, courts of equity have exercised jurisdiction to restrain ticket brokers from dealing in non-transferable railroad tickets.²¹ The grounds generally given for relief are the prevention of a fraud on

²⁰ *Richmond Nat. Gas Co. v. Clawson*, 155 Ind. 659, 58 N. E. 1049, 51 L. R. A. 744; *Wiemer v. Louisville Water Co.*, 130 Fed. 251; *contra*, that the proper remedy is *mandamus*, see *Johnson v. Atlantic City Gas & W. Co.* (N. J.), 56 Atl. 550. Where an ordinance limits the rates of charge by a telephone company, parties having separate contracts with the company may join in a suit to enjoin it from charging higher rates: *Charles Simon's Sons Co. v. Maryland T. & T. Co.* (Md.), 57 Atl. 193. And it has been held that a city, after fixing a maximum scale of water rates, may have an injunction to enforce its order: *City of Des Moines v. Des Moines Waterworks Co.*, 95 Iowa, 348, 64 N. W. 269.

²¹ *Nashville, C. & St. L. R. Co. v. McConnell*, 82 Fed. 65; *Louisville & N. R. Co. v. Bitterman*, 128 Fed. 176; *Illinois Cent. R. Co. v. Caffrey*, 128 Fed. 770; *Schubach v. McDonald*, 179 Mo. 163, 101 Am. St. Rep. 452, 78 S. W. 1020; *Kinner v. Lake Shore & M. S. R. Co.*, 69 Ohio St. 339, 69 N. E. 614. See, also, *Delaware, L. & W. R. Co. v. Frank*, 110 Fed. 689. "These suits are to restrain these defendants from the continued and repeated use of these contracts as instruments and means whereby to commit frauds upon complainants' business. They are not suits between the parties to these contracts, but against third parties, to restrain the fraudulent use of the contracts as means of committing such wrong": *Nashville, C. & St. L. R. Co. v. McConnell*, *supra*. "When they engage in the business of buying tickets that are not transferable, and by so doing interfere with complainant's business and subject them to loss and expense, and assist others to perpetrate a fraud on the complainants, they are engaged in an unlawful calling, productive of injury to others, and acts of that nature can be rightfully enjoined": *Illinois Cent. R. Co. v. Caffrey*, *supra*. As to multiplicity of suits, see *Nashville, C. & St. L. R. Co. v. McConnell*, *supra*, holding also that several brokers may be joined as defendants. To the effect that it is immaterial that such acts constitute crimes, see *same case*.

the complainant and the avoidance of a multiplicity of suits at law. Dealing in such tickets constitutes a tort, based either upon the interference with the contractual rights between the railroad and the holder of the ticket, or upon the fraud perpetrated by the wrongful use of tickets by persons not entitled thereto, upon the complainant's business. Each ticket transferred gives rise to a separate cause of action; and when the number is great, many suits at law are necessary. Such remedies are clearly inadequate, and accordingly an injunction is proper. It has been pointed out in some of the cases that the use of such tickets constitutes a fraudulent interference with the business of the railroad, and that great loss therefrom may be suffered. It is questionable whether a violation of law by the complainant in the matter of rates is a ground for refusal of relief. The maxim, "He who comes into equity must come with clean hands," ordinarily applies only to conduct with respect to the subject-matter. The courts are divided as to whether such a violation is in respect to the subject-matter of the injunction suit.²²

Much the same questions have arisen in a group of cases relating to illegitimate dealing in "trading stamps." These were tokens, issued by a company to certain merchants for distribution to their customers on certain terms, non-transferable by them, and redeemable in merchandise by the issuing company when presented in a sufficient number by such a customer. The purchase and sale of such stamps, on an extensive scale, by unauthorized parties, in such a manner as to work a fraudulent and unfair interference with the issuing com-

²² To the effect that such violation is a bar to relief, see *Delaware L. & W. R. Co. v. Frank*, 110 Fed. 689. *Contra*, *Kinner v. Lake Shore & M. S. R. Co.*, 69 Ohio St. 339, 69 N. E. 614.

pany's contracts and serious damage to its business, has been enjoined.²³

§ 635. Injunctions for the Protection of Electric Currents. The interference with wires in a public street by the stringing of other wires in such a manner as to cause electrical induction and the injuries resulting therefrom, has been considered by the courts in a series of recent cases. In the cases which have arisen, neither party has been entitled to an exclusive right; both have had authority to use the street. As a matter of law, it is held that "where a person is making lawful use of his own property, or of a public franchise, in such a manner as to occasion injury to another, the question of his liability will depend upon the fact whether he has made use of the means which, in the progress of science and improvements, have been shown by experience to be the best."²⁴ Hence it is held that a street railway company will not be enjoined from maintaining a trolley wire in the center of the street merely because the grounding of the wire causes a current in a telephone wire, by conduction.²⁵ Where, however, wires are strung so close to others as to cause induction, which might be prevented by placing the wires at a greater distance, a right is infringed, and an injunction is a proper remedy.²⁶ The ground of the jurisdiction has

²³ *Sperry & Hutchinson Co. v. Mechanics' Clothing Co.*, 128 Fed. 800, 135 Fed. 833; *Same v. Temple*, 137 Fed. 992.

²⁴ *Cumberland Telephone & Tel. Co. v. United Electric Ry. Co.*, 42 Fed. 273, 12 L. R. A. 544. See, also, *American Tel. & Tel. Co. v. Morgan Co. Tel. Co.*, 100 Am. St. Rep. 53, 138 Ala. 597, 36 South. 178.

²⁵ *Cumberland Tel. & Tel. Co. v. United Electric Ry. Co.*, 42 Fed. 273, 12 L. R. A. 544.

²⁶ *Birmingham Traction Co. v. Southern Bell Tel. & Tel. Co.*, 119 Ala. 144, 24 South. 731; *Paris El. Light etc. Co. v. Telephone Co. (Tex. Civ. App.)*, 27 S. W. 902. See, also, *Rutland El. L. Co. v. Marble City El. L. Co.*, 65 Vt. 377, 36 Am. St. Rep. 869, 26 Atl.

been said to be that defendant's conduct "is an unwarranted usurpation amounting to a trespass on complainant's rights, which is recurrent, continuous and tending to a multiplicity of suits."²⁷

635, 20 L. R. A. 821. But of course no injunction will issue at suit of a telephone company whose franchise is conditioned that it shall not interfere with an existing railway: Hudson River Tel. Co. v. Watervliet Turnpike & R. Co., 135 N. Y. 393, 31 Am. St. Rep. 838, 32 N. E. 148, 17 L. R. A. 674.

²⁷ Birmingham Traction Co. v. Southern Bell Tel. & Tel. Co., 119 Ala. 144, 24 South. 731.

CHAPTER XXX.

MANDATORY INJUNCTIONS.

ANALYSIS.

§ 636. Mandatory injunctions.

§ 636. **Mandatory Injunctions.**—"This term, in strictness, is confined to interlocutory or preliminary injunctions. Where, on the final hearing in a case of nuisance, or interference with easements, or continued trespass analogous to nuisance, the relief is granted compelling the defendant to remove his obstructions or erections, and to restore the plaintiff to his original condition, and thereby to end the wrong, the remedy is in fact an ordinary decree for an abatement, and is in no proper sense an injunction of any kind. But in these and similar cases the *preliminary* injunction, while purporting simply to restrain the wrong, and while negative in its terms, may be so framed that it restrains the defendant from permitting his previous wrongful act to operate, and therefore virtually compels him to undo it by removing the obstructions or erections, and by restoring the plaintiff to his former condition. Such an injunction is termed mandatory, and resembles in its effect the restorative interdict of the Roman law. It is used where the injury is immediate, and pressing, and irreparable, and clearly established by the proofs, and not acquiesced in by the plaintiff, since an order directly compelling an abatement of the nuisance, or a removal of the obstruction, cannot be made upon interlocutory motion.¹ The rule is

¹ "Preliminary mandatory injunctions have undoubtedly been

fully established, at least by the English decisions, and is not controverted by American authority, that in such cases, where the facts are clearly established and the injury is real, and the plaintiff acted promptly upon

granted more freely by the English courts than by the American. Indeed, it has been said in some American decisions that a mandatory *interlocutory* injunction would never be granted. The doctrine is not only opposed to the overwhelming weight of authority, but is contrary to the principle which regulates the administration of preventive relief, and is manifestly absurd.

“In *Robinson v. Lord Byron*, 1 Brown Ch. 588, Lord Eldon granted a preliminary injunction restraining defendant ‘from using and maintaining certain dams, gates, etc., so as to prevent water from flowing to plaintiff’s mill as it had done.’ This was done for the express purpose of compelling defendant to remove the dams, gates, etc., which he had constructed. In *Lane v. Newdigate*, 10 Ves. 192, Lord Eldon granted a preliminary injunction restraining defendant ‘from impeding plaintiff from navigating [a certain canal] by continuing to keep the canal banks and works out of repair, by diverting the water, or by continuing the removal of the stop-gate.’ Lord Eldon said this would have the effect of causing defendant to restore the stop-gate and repair the banks; and he avowedly granted the injunction for that express object. These two cases are among the earliest, if not the very earliest, instances of preliminary injunctions intentionally and expressly mandatory in their operation”: 4 Pom. Eq. Jur., § 1359, and note.

In the following cases preliminary mandatory injunctions were denied: *Blakemore v. Glamorganshire Canal Nav.*, 1 Mylne & K. 154, 183, 184 (criticising *Lane v. Newdigate* and *Robinson v. Lord Byron*, *supra*, Brougham, L. C., said: “I take leave to agree with Lord Lyndhurst in the opinion that if the court has this jurisdiction, it would be better to exercise it directly and at once; and I will further take leave to add, that the having recourse to a round-about mode of obtaining the object, seems to cast a doubt upon the jurisdiction; . . . although we have no right to say there is not a precedent for taking a similar course here, yet surely we may pause; and, without denying the jurisdiction, decline to exercise it”); *Gardner v. Stroeve*, 81 Cal. 148, 22 Pac. 483, 6 L. R. A. 90; *Minneapolis & St. L. R. Co. v. Chicago, M. & St. P. R. Co.*, 116 Iowa, 681, 88 N. W. 1082; *Ladd v. Flynn*, 90 Mich. 181, 51 N. W. 203; *Lord v. Carbon Iron Mfg. Co.*, 38 N. J. Eq. 452; *Herbert v. Pennsylvania R. Co.*, 43 N. J. Eq. 23, 10 Atl. 872 (“a mandatory injunction should be issued interlocutorily with hesitation and caution, and only in an extreme case, where the law plainly does not

his acquiring knowledge of the defendant's proceeding, a preliminary mandatory injunction may be granted, although the act complained of was fully completed before the suit was commenced. It should be observed,

afford an adequate remedy'''); Delaware, L. & W. R. Co. v. Central etc. Co., 43 N. J. Eq. 605, 12 Atl. 374, 13 Atl. 615; Bailey v. Schnitzius, 45 N. J. Eq. 178, 16 Atl. 680; Jacquelin v. Erie R. Co. (N. J.), 61 Atl. 18; Black Lick Mfg. Co. v. Saltsburg Gas Co., 139 Pa. St. 448, 21 Atl. 432. In Black v. Good Intent etc. Co., 31 La. Ann. 497, the rule is laid down as follows: "The writ in the mandatory form cannot be issued until a hearing on the merits, when it is a judicial writ and is used to enforce a decree; or when, a prohibitory writ having issued, restraining a party from obstructing the exercise of a right, the obstruction may be commanded to be removed because its continuance effects the very injury he was prohibited from effecting." In Rogers Locomotive etc. Works v. Erie Ry. Co., 20 N. J. Eq. 379, it was said that if a preliminary mandatory injunction ever does issue, it is only in cases of obstruction to easements or rights of like nature.

To the effect that a preliminary mandatory injunction is proper in some cases, see Cole Silver Min. Co. v. Virginia etc. Water Co., 1 Saw. 470, Fed. Cas. No. 2989; 1 Saw. 685, Fed. Cas. No. 2990 (mandatory injunction granted to compel building of bulkhead to prevent diversion of water); Longwood Val. R. Co. v. Baker, 27 N. J. Eq. 166 (court will not interfere by mandatory injunction unless extreme or very serious damage will ensue from withholding that relief; and each case must depend on its own circumstances); Black Lick Mfg. Co. v. Saltsburg Gas Co., 139 Pa. St. 448, 21 Atl. 432 (relief denied, but right recognized); White v. Codd (Wash.), 80 Pac. 836 (relief granted). In Pennsylvania, when there has been "a race against law," and a party has done certain acts in such a way as to indicate that he has sought to evade action by the court, a preliminary mandatory injunction may issue to put the parties in *statu quo*: Cooke v. Boynton, 135 Pa. St. 102, 19 Atl. 944. It may also issue to compel a natural gas company to restore a flow of gas: Whiteman v. Fayette Fuel Gas Co., 139 Pa. St. 492, 20 Atl. 1062. But such an injunction will not issue to take the place of ejectment: Fredericks v. Huber, 180 Pa. St. 572, 37 Atl. 90. In Low v. Innes, 4 De Gex, J. & S. 286, a mandatory injunction, in aid of specific performance of a covenant in a lease, to compel the pulling down of a wall, was dissolved upon a reasonable offer being made by defendants.

Mandatory injunctions were granted as final relief in Corning v. Troy Iron & Nail Co., 40 N. Y. 191; Auburn etc. P. R. v. Douglass,

however, that no other equitable remedy is more liable to be defeated by acquiescence, or by delay on the plaintiff's part from which acquiescence may be inferred. The cases require of the plaintiff a promptness in objecting and in taking steps to enforce his objection, upon receiving notice of the defendant's structures or erections which are sought to be restrained, if the circumstances are such that the defendant would be unnecessarily prejudiced by the plaintiff's delay."²

12 Barb. 553; *Penniman v. New York Balance etc. Co.*, 13 How. Pr. 40; *Whitaker v. McBride* (Neb.), 98 N. W. 877 (to enforce decree quieting plaintiff's title against one in possession).

Mandatory injunctions were denied upon the hearing in the following cases: *Curriers Co. v. Corbett*, 4 De Gex, J. & S. 764; *Jacomb v. Knight*, 3 De Gex, J. & S. 533; *Isenberg v. East India House Co.*, 3 De Gex, J. & S. 263.

See, further, on the subject of mandatory injunctions, preliminary and final, *ante*, chapters XXIII-XXVI, XXVIII.

2 Pom. Eq. Jur., § 1359. The author continues, in the note: "In some cases a delay by the plaintiff would clearly not be prejudicial to defendant. For example, in *Greatrex v. Greatrex*, 1 De Gex & S. 692, one partner had wrongfully removed the partnership books from the place of business, and a preliminary injunction was granted, restraining him 'from keeping them or permitting them to be kept at any other place than the place of business,' thus compelling him to restore the books. Here a delay of weeks or even months could work the defendant no harm. Where the injunction is sought to compel the removal of structures, walls, buildings, and the like, if the plaintiff knowingly permit the defendant to go on and incur any considerable further expenditure of money before he makes objection, he will generally lose his right to the somewhat special remedy of a mandatory injunction."

CHAPTER XXXI.

EQUITABLE RELIEF AGAINST ACTIONS, JUDGMENTS AND EXECUTIONS AT LAW.

ANALYSIS.

- § 637. Origin of the jurisdiction.
- §§ 638-644. When the jurisdiction is not exercised.
 - § 638. General doctrine.
 - § 639. Same—Inexcusable neglect.
 - § 640. Jurisdiction of federal courts to enjoin proceedings in state courts.
 - § 641. State courts cannot enjoin proceedings of federal courts.
 - § 642. Relief from equitable proceedings and decrees.
 - § 643. Probate decrees.
 - § 644. No injunction against criminal proceedings.
 - § 645. When the jurisdiction may be exercised—First class—Equitable rights.
 - § 646. Same—Second class.
- §§ 647-669. Same—Third class.
 - § 648. Rationale of the doctrine.
 - § 649. Fraud as a ground for relief.
 - § 650. Violation of stipulation or agreement.
 - § 651. Miscellaneous instances of unconscionable conduct.
 - § 652. Same—Continued.
 - § 653. Fraud subsequent to trial.
 - § 654. Fraudulent concealment.
- §§ 655-656. Instances of refusal of relief.
 - § 656. Perjury.
- §§ 657-662. Accident, mistake and surprise.
 - § 657. In general.
 - § 658. Accident.
- §§ 659-661. Mistake.
 - § 660. Same—Mistake of officers of court.
 - § 661. Same—Newly discovered evidence.
 - § 662. Surprise.
- §§ 663-666. Want of jurisdiction—Failure to serve summons or process.

- § 664. Same—Continued.
- § 665. Same—Unauthorized appearance of attorney.
- § 666. Same—Miscellaneous.
- § 667. Meritorious defense must be shown.
- § 668. Jurisdiction to grant new trials at law.
- § 669. Effect of statutory remedies.
- § 670. Injunctions against proceedings in foreign jurisdictions.
- §§ 671-674. Injunctions against executions.
- § 672. Same—Real property.
- § 673. Same—Property of third persons.
- § 674. Same—Not for mere irregularities.

§ 637. Origin of the Jurisdiction.—“The use of injunctions to stay actions at law was almost coeval with the establishment of the chancery jurisdiction. Without this means of interference to protect the rights of its suitors, the court of chancery could never have established, extended, and enforced its own jurisdiction. It is no exaggeration to say that, during its formative periods, the equitable jurisdiction was built up through the instrumentality of the injunction restraining the prosecution of legal actions, where the defendants sought the aid of chancery, which alone could take cognizance of the equities that would defeat a recovery at law against them. This was not accomplished, however, without a long and severe opposition from the common-law judges, which continued until the reign of James I. The jurisdiction then firmly established by judicial authority has never since been questioned. The reasons urged by the common-law judges were frivolous. The injunction is not addressed to, nor does it operate upon, the courts of law; instead of denying or interfering with, it virtually admits and assumes, their jurisdiction. It is addressed to the litigant parties, and prohibits them from resorting to the legal jurisdiction, because their controversies, depending upon equitable principles, or involving equitable features, can only be fully and finally determined by a tribunal

having the equitable jurisdiction. Injunction is the remedy which, above all others, necessarily operates *in personam*.”¹

§ 638. When the Jurisdiction is not Exercised—General Doctrine.—“Where a court of law can do as full justice to the parties and to the matter in dispute as can be done in equity, a court of equity will not stay proceedings at law.² Equity will not restrain a legal action or judgment where the controversy would be decided by the court of equity upon a ground equally available at law, unless the party invoking the aid of equity can show some special *equitable* feature or ground of relief; and in the case assumed, this special feature or ground must necessarily be something connected with the mode of trying and deciding the legal action, and not with the cause of action or the defense themselves.³ It is not such a special equitable ground of interference that the party has, by his own act or omission, failed to effectually avail himself of a valid defense at law, nor that the court of law has decided a question of law or of fact erroneously.⁴ The principle is well established, and is universal in its application, that when a cause

¹ Pom. Eq. Jur., § 1360.

² Southampton Dock Co. v. Southampton etc. Board, L. R. 11 Eq. 254 (action at law stayed where completeness of relief at law is doubtful, and questions of fiduciary relationship, etc., are involved).

³ “Because it is assumed that the ground of decision is equally available at law and in equity, and therefore the special equitable feature must be something *dchors* the very issues and merits of the controversy: See Harrison v. Nettleship, 2 Mylne & K. 423; Williams v. Stewart, 56 Ga. 663.”

⁴ In Bateman v. Willoe, 1 Schoales & L. 201, 204, 206, “Lord Redesdale stated this rule in language which has ever since been regarded as a correct exposition of the principle: ‘It is not sufficient to show that injustice has been done, but that it has been done under circumstances which authorize the court to interfere. Because if a matter has already been investigated in a court of justice, according to the common and ordinary rules of investigation, a court

belongs to the jurisdiction of the law courts, equity will never interfere to restrain the prosecution of the action, nor to stay proceedings on the judgment or execution, *upon any mere legal grounds*, although it may be demonstrated that the complainant in equity (generally the defendant at law) had a valid legal defense, which was not made available either through the error of the court in determining the law or the facts, or the omissions of himself or his counsel in presenting it, or in obtaining the evidence by which it could have been supported.”⁵

of equity cannot take on itself to enter into it again. Rules are established, some by the legislature, some by the courts themselves, for the purpose of putting an end to litigation, and it is more important that an end should be put to litigation than that justice should be done in every case. . . . The inattention of parties in a court of law can scarcely be made a subject for the interference of a court of equity. There may be cases cognizable at law and also in equity, and of which cognizance cannot be effectually taken at law; and therefore equity does sometimes interfere, as in cases of complicated accounts, where the party has not made a defense, because it was impossible for him to do it effectually at law. So where a verdict has been obtained by fraud, or where a party has possessed himself improperly of something, by means of which he has an unconscientious advantage at law which equity will put out of the way or restrain him from using. But without circumstances of that kind, I do not know that equity ever does interfere to grant a trial of a matter which has already been discussed in a court of law,—a matter capable of being discussed there, and over which a court of law has full jurisdiction.’ It should be carefully observed that the chancellor is not speaking of those cases which involve, in their very cause of action or defense, features or interests cognizable only by courts of equity; nor of the other class of cases which, in ordinary phraseology, belong to the concurrent jurisdiction both of law and equity; he refers to cases which in *themselves* present no equitable aspect, and properly come within the jurisdiction of the law, but which, for some reason or another, *have been wrongly tried and decided by the court of law*. There must have been some special equitable ground connected with this wrongful trial and decision, in order that equity may interfere and restrain the judgment”: 4 Pom. Eq. Jur., § 1361, and note 3.

5 To the effect that a court of equity will not grant relief on account of mere errors of law, such as erroneous rulings as to the ad-

§ 639. **Same—Inexcusable Neglect.**—Equity will not relieve one whose inexcusable neglect in the defense or prosecution of an action has resulted in a judgment

mission of evidence, erroneous decisions, etc., see *Simpson v. Lord Howden*, 3 Mylne & C. 97, 108; *Daly v. Pennie*, 86 Cal. 552, 21 Am. St. Rep. 61, 25 Pac. 67; *Hood v. New York etc. R. Co.*, 23 Conn. 609; *Burke v. Wheat*, 22 Kan. 722; *Shortridge v. Bartlett*, 14 B. Mon. 248; *Landry v. Bertrand*, 48 La. Ann. 48, 19 South. 126; *Brigot's Heirs v. Brigot*, 49 La. Ann. 1428, 22 South. 641 (insufficiency of evidence not ground for relief); *Yarborough v. Thompson*, 3 Smedes & M. 291, 41 Am. Dec. 626; *A. B. Smith Co. v. Bank of Holmes Co.* (Miss.), 18 South. 847; *Price v. Johnson Co.*, 15 Mo. 433; *Cooper v. Duncan*, 58 Mo. App. 5; *Fox v. McClay*, 48 Neb. 820, 67 N. W. 888; *Vaughn v. Johnson*, 9 N. J. Eq. 173; *Reeves v. Cooper*, 12 N. J. Eq. 223, 498; *Vilas v. Jones*, 1 N. Y. 274; *Thompson v. Meek*, 3 Sneed. 271.

A mere irregularity in a judgment or decree is not ground for equitable relief: *Skirving v. National Life Ins. Co.*, 19 U. S. App. 442, 59 Fed. 742, 8 C. C. A. 241; *Davis v. Clements*, 148 Ind. 605, 62 Am. St. Rep. 539, 47 N. E. 1056; *Hart v. O'Rourke*, 151 Ind. 205, 51 N. E. 330; *Devinney v. Mann*, 24 Kan. 682; *Hunter v. Kansas City etc. Bank*, 158 Mo. 262, 58 S. W. 1053 (party's name did not appear in caption); *Knott v. Taylor*, 99 N. C. 511, 6 Am. St. Rep. 547, 6 S. E. 788 (irregular because defendant had died); *Henderson v. Moore*, 125 N. C. 383, 34 S. E. 446; *Reast v. Hughes* (Tex. Civ. App.), 33 S. W. 1003.

In accordance with these views, it is generally held that a court of equity will not interfere upon grounds which were or are available at law, unless some good excuse is given for failure to take advantage of them: *Ware v. Horwood*, 14 Ves. 28, 31; *Protheroe v. Forman*, 2 Swanst. 227, 233; *Kemp v. Tucker*, L. R. 8 Ch. 369; *Baron de Worms v. Mellier*, L. R. 16 Eq. 554; *Duckworth v. Duckworth's Admr.*, 35 Ala. 70; *Creath v. Sims*, 5 How. 192, 12 L. ed. 111; *Hendrickson v. Hineckley*, 17 How. 443, 445, 15 L. ed. 123; *Marine Ins. Co. v. Hodgson*, 7 Cranch, 332, 3 L. ed. 362; *Phillips v. Negley*, 117 U. S. 675, 6 Sup. Ct. 901, 29 L. ed. 1013; *Knox Co. v. Harshman*, 133 U. S. 152, 10 Sup. Ct. 257, 33 L. ed. 586; *Deweese v. Reinhard*, 165 U. S. 386, 17 Sup. Ct. 340, 41 L. ed. 757; *Truly v. Wanzer*, 46 U. S. (5 How.) 141, 12 L. ed. 88; *Scottish U. & N. Ins. Co. v. Bowland* (U. S.), 25 Sup. Ct. 345; *New Orleans v. Morris*, 3 Woods, 103 Fed. Cas. No. 10,182; *Tompkins v. Drennen*, 13 U. S. App. 308, 56 Fed. 694, 6 C. C. A. 83; *Cox v. O'Neal* (Ala.), 37 South. 674; *Womack v. Powers*, 50 Ala. 5; *Shaw v. Lindsey*, 60 Ala. 344; *Holt v. Pickett*, 111 Ala. 362, 20 South. 432; *Foshee v. McCreary*, 123 Ala. 493, 26 South. 309; *Taft v. Booth*, 104 Ga. 590, 30 S. E. 803; *Hin-*

against him. What amounts to such neglect depends largely upon the circumstances of each particular case. Where a party negligently fails to have an appearance properly made, and a default results, a court of equity will generally deny relief;⁶ and a like result may be

richsen v. Van Winkle, 27 Ill. 334 ("This rule is absolutely inflexible, and cannot be violated even when the judgment in question is manifestly wrong in law and in fact, or when the effect of allowing it to stand, will be to compel the payment of a debt which the defendant does not owe, or which he owes to a third party"); *Warren v. Cook*, 116 Ill. 199, 5 N. E. 538; *Dubuque etc. R. R. Co. v. Cedar Falls etc. R. Co.*, 76 Iowa, 702, 39 N. W. 691 (injunction against prosecution of action refused); *Vennum v. Davis*, 35 Ill. 568; *Spraker v. Bartlett*, 73 Ill. App. 522; *Bard v. Jones*, 96 Ill. App. 370; *O'Connor v. Sheriff*, 30 La. Ann. 441; *Windwart v. Allen*, 13 Md. 196; *Lyday v. Douple*, 17 Md. 188; *Payson v. Lamson*, 134 Mass. 593, 45 Am. Rep. 348; *Saunders v. Huntington*, 166 Mass. 96, 44 N. E. 127 (no injunction against action on ground that debtor has been discharged in bankruptcy, for that can be set up as a defense at law); *St. Johns Nat. Bank v. Bingham Tp.*, 113 Mich. 203, 71 N. W. 588 (bill to enjoin action); *Holmes v. Steele*, 28 N. J. Eq. 173; *Phillips v. Pullen*, 45 N. J. Eq. 5, 16 Atl. 9 (citing Pom. Eq. Jur., § 1361); *Mayor etc. of New York v. Brady*, 115 N. Y. 615, 22 N. E. 237 (quoting Pom. Eq. Jur., § 1361); *Gatlin v. Kilpatrick*, 4 N. C. 147, 6 Am. Dec. 557, 1 Car. Law Repos. 534; *McClure v. Miller*, Bail. Eq. 107, 21 Am. Dec. 522; *Hoge v. Fidelity Loan & Tr. Co. (Va.)*, 48 S. E. 494; *Evans v. Taylor*, 28 W. Va. 184. In many of these cases the complainant failed to avail himself of a defense through culpable negligence. If the failure to use a defense at law is the result of culpable negligence, relief will certainly be denied: See cases cited, § 639, *post*.

A novel situation is presented in *Bomeisler v. Forster*, 154 N. Y. 229, 48 N. E. 534, 39 L. R. A. 240, where a release available at law was made the basis of an injunction against a legal action, the fact that a trial would cause certain scandalous matter to become public being relied upon.

Defenses which have been urged and adjudicated at law are not, under ordinary circumstances, ground for relief in equity: *Morrison's Exr. v. Hart*, 5 Ky. (2 Bibb) 4, 4 Am. Dec. 663; *Bachelder v. Bean*, 76 Me. 370.

⁶ *Higgins v. Bullock*, 73 Ill. 205; *Kern v. Strausberger*, 71 Ill. 413; *Wilson v. Coolidge*, 42 Mich. 112, 3 N. W. 285; *Graham v. Roberts*, 1 Head, 56; *Warner v. Conant*, 24 Vt. 351, 58 Am. Dec. 178; *Slack*

reached when the judgment results from a negligent failure to attend the trial.⁷ A neglect to set up a known legal defense will bar equitable relief growing out of it.⁸ Ignorance of facts constituting a defense does not excuse the omission of a party to make it, nor entitle him to the aid of equity, unless it can be shown that the party could not have acquired the information by the diligent and careful labor in preparing the cause for trial

v. Wood, 9 Gratt. 40; *Shields v. McClung*, 6 W. Va. 79. See, also, *Hass v. Levertton* (Iowa), 102 N. W. 811. The mere employment of an attorney to defend the case is not a sufficient excuse: *Payton v. McQuown*, 97 Ky. 757, 53 Am. St. Rep. 437, 31 S. W. 874, 31 L. R. A. 33; *Kern v. Strausberger*, 71 Ill. 413. See, also, *Sullivan v. Shell*, 36 S. C. 578, 31 Am. St. Rep. 894, 15 S. E. 722 (proceeding to revive judgment; no appearance).

⁷ *Rogers v. Parker*, 1 Hughes, 148, Fed. Cas. No. 12,018 (failure of attorney to attend trial).

⁸ "Whenever a competent remedy or defense shall have existed at law, the party who may have neglected to use it, will never be permitted here to supply the omission, to the encouragement of useless and expensive litigation, and perhaps to the subversion of justice": *Creath v. Sims*, 5 How. 192, 12 L. ed. 111; *Sample v. Barnes*, 55 U. S. 70, 14 L. ed. 330. See, also, *Tompkins v. Drennen*, 56 Fed. 694, 6 C. C. A. 83; *Hungerford v. Sergerson*, 20 How. 156, 15 L. ed. 869; *Jamison v. May*, 13 Ark. 600; *Smith v. Phinizy*, 71 Ga. 641; *Center Tp. v. Board of Comm.*, 110 Ind. 580, 10 N. E. 291; *Paynter v. Evans*, 7 B. Mon. 420; *Gorsuch v. Thomas*, 57 Md. 334; *Prather v. Prather's Admr.*, 11 Gill & J. 110; *Williams v. Jones*, 10 Smedes & M. 108; *Robb v. Halsey*, 11 Smedes & M. 140 (witnesses not subpoenaed); *Norwegian Plow Co. v. Bollman*, 47 Neb. 186, 66 N. W. 292, 31 L. R. A. 747; *Barker v. Elkins*, 1 Johns. Ch. 465; *Champion v. Miller*, 2 Jones Eq. (55 N. C.) 194; *Brenner v. Alexander*, 16 Or. 349, 8 Am. St. Rep. 301, 19 Pac. 9; *Brandon v. Green*, 7 Humph. 130; *White v. Cabal's Admr.*, 2 Swan, 550; *Brownson v. Reynolds*, 77 Tex. 254, 13 S. W. 986; *Emerson v. Udall*, 13 Vt. 477, 37 Am. Dec. 604; *Day v. Cummings*, 19 Vt. 496; *Allen v. Hamilton*, 9 Gratt. 255; *Bierne v. Mann*, 5 Leigh, 364; *Richmond Enquirer Co. v. Robinson*, 24 Gratt. 548. And see *Bellamy v. Woodson*, 4 Ga. 175, 48 Am. Dec. 221 (party had knowledge of defense, but was inexcusably ignorant that case was still pending). Equity will not relieve merely because a party has, by mistake, put in a plea which does not cover his defense in a court of law, when, by the ordinary practice of that court, he could be permitted to amend: *Graham v. Staggs*, 2 Paige, 321.

which he is bound to make.⁹ Where a right of appeal has been lost by negligence, equity will not ordinarily interfere.¹⁰ It is generally held in all of these matters that the neglect of an attorney is imputable to his client.¹¹ Of course, where it appears that the neglect has been caused by the promises or statements of the adverse party, or where, for any reason, it is excusable, relief may be freely granted.

§ 640. **Jurisdiction of Federal Courts to Enjoin Proceedings in State Courts.**—Congress has provided that “the writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.”¹² This provision has limited the powers of the

⁹ *Smith v. Powell*, 50 Ill. 21 (inexcusable ignorance of facts amounting to defense no ground for relief from default); *Smith v. Allen*, 63 Ill. 474; *Fuller v. Little*, 69 Ill. 229; *Center Tp. v. Board of Comm.*, 110 Ind. 580, 10 N. E. 291; *Dilly v. Barnard*, 8 Gill & J. 170 (ignorance of facts which might have been obtained by bill of discovery); *Gorsuch v. Thomas*, 57 Md. 334; *Kirby v. Pascault*, 53 Md. 531; *Carolus v. Koch*, 72 Mo. 645; *Metropolitan El. Ry. Co. v. Johnston*, 158 N. Y. 739, 53 N. E. 1128 (affirming 84 Hun, 83, 32 N. Y. Supp. 49); *Floyd v. Jayne*, 6 Johns. Ch. 479; *Foster v. Wood*, 6 Johns. Ch. 87; *Munn v. Worrall*, 16 Barb. 221; *Mayor etc. of New York v. Brady*, 115 N. Y. 616, 22 N. E. 237; *Peace v. Nailing*, 1 Dev. Eq. (16 N. C.) 289; *Burton v. Wiley*, 26 Vt. 430; *Smith v. McLain*, 11 W. Va. 654.

¹⁰ *Ruppertsberger v. Clark*, 53 Md. 402 (lost through delay of attorney); *Renfro v. Renfro*, 54 Mo. App. 429; *Ballard v. Nashville & K. R. Co.*, 94 Tenn. (10 Pickle) 205, 28 S. W. 1088; *Nye v. Sochor*, 92 Wis. 40, 53 Am. St. Rep. 896, 65 N. W. 854. Likewise where an adequate remedy by motion for a new trial is lost through negligence, relief will not be granted: *Hannon v. Maxwell*, 31 N. J. Eq. 318.

¹¹ *Rogers v. Parker*, 1 Hughes, 148, Fed. Cas. No. 12,018; *Kern v. Strausberger*, 71 Ill. 413; *Fuller v. Little*, 69 Ill. 229; *Newman v. Schueck*, 58 Ill. App. 328; *Payton v. McQuown*, 97 Ky. 757, 53 Am. St. Rep. 437, 31 S. W. 874, 31 L. R. A. 33; *Patterson v. Matthews*, 3 Bibb. 80.

¹² Act, March 2, 1793, c. 22, § 5, 1 Stats. 334; 1 U. S. Comp. Stats., 1901, § 720.

federal courts, and in most cases prevents the exercise of the jurisdiction.¹³ Injunctions in aid of bankruptcy proceedings being expressly excepted by the statute, such relief is quite frequently given.¹⁴ The statute does not apply when the jurisdiction of a federal court has first attached. Accordingly, a federal court may grant an injunction against a proceeding in a state court when necessary to render effective its own decree.¹⁵ It is also held that injunctions may issue in

¹³ *United States v. Parkhurst-Davis Merc. Co.*, 176 U. S. 317, 20 Sup. Ct. 423, 44 L. ed. 485 (no injunction against enforcement of claims against Indians in state court); *Dial v. Reynolds*, 96 U. S. 340, 44 L. ed. 644; *Diggs v. Walcott*, 8 U. S. (4 Cranch) 179, 2 L. ed. 587; *Oliver v. Parlin & Orendorff Co.*, 105 Fed. 272, 45 C. C. A. 200; *Aultman & Taylor Co. v. Brumfield*, 102 Fed. 7; *Mills v. Provident Life & Trust Co.*, 100 Fed. 344, 40 C. C. A. 394 (no injunction against levy and sale under execution); *Coeur d'Alene R. & N. Co. v. Spalding*, 93 Fed. 280, 35 C. C. A. 295; *Chicago, R. I. & P. Ry. Co. v. St. Joseph Union Depot Co.*, 92 Fed. 22; *Simpson v. Ward*, 80 Fed. 561; *Baker v. Ault*, 78 Fed. 394; *Southern Bank & Trust Co. v. Folsom*, 75 Fed. 929, 21 C. C. A. 568; *Hemsley v. Myers*, 45 Fed. 283. "The prohibition of the statute does not extend to proceedings in a court of the state up to and including final judgment, but to the entire proceedings from the commencement of the suit until the execution issued on the judgment or decree is satisfied": *Leathe v. Thomas*, 97 Fed. 136, 38 C. C. A. 75.

¹⁴ Whether a case is such as to entitle a party to an injunction, depends upon the provisions of the bankruptcy act. In the following cases, relief was granted: *Chapman v. Brewer*, 114 U. S. 158, 5 Sup. Ct. 799, 29 L. ed. 83; *Ex parte Christy*, 44 U. S. (3 How.) 292, 11 L. ed. 603; *In re Kletchka*, 92 Fed. 901; *Blake, Moffitt & Towne v. Francis-Valentine Co.*, 89 Fed. 691. In the following cases relief was denied under various circumstances: *Leroux v. Hudson*, 109 U. S. 468, 3 Sup. Ct. 309, 27 L. ed. 1000; *Pickens v. Dent*, 106 Fed. 653, 45 C. C. A. 522; *Heath v. Shaffer*, 93 Fed. 647; *In re Holloway*, 93 Fed. 638; *In re Ogles*, 93 Fed. 426.

¹⁵ *Harkrader v. Wadley*, 172 U. S. 148, 19 Sup. Ct. 119, 43 L. ed. 399; *Riverdale Cotton Mills v. Alabama & G. Mfg. Co. (U. S.)*, 25 Sup. Ct. 629; *Central Trust Co. v. Western N. C. R. Co.*, 112 Fed. 471 (after decreeing foreclosure, court may enjoin sale under execution upon judgment of state court); *James v. Central Trust Co.*, 98 Fed. 489, 39 C. C. A. 126; *Riverdale Cotton Mills v. Alabama & G. Mfg. Co.*, 111 Fed. 431; *State Trust Co. v. Kansas City, P. & G. R.*

cases which have been regularly removed from state courts, to restrain further proceedings.¹⁶

Co., 110 Fed. 10; *Starr v. Chicago, R. I. & P. Ry. Co.*, 110 Fed. 3; *Mercantile Trust & Dep. Co. v. Roanoke & S. Ry. Co.*, 109 Fed. 3; *Pitt v. Rodgers*, 104 Fed. 387, 43 C. C. A. 600; *Fidelity Insur., Trust & S. D. Co. v. Norfolk & W. R. Co.*, 88 Fed. 815; *Terre Haute & I. R. Co. v. Peoria & P. U. R. Co.*, 82 Fed. 943. The reasons for the rule are well stated in *Deitzsch v. Huidekoper*, 103 U. S. 494, 26 L. ed. 497: "A court of the United States is not prevented from enforcing its own judgments by the statute which forbids it to grant a writ of injunction to stay proceedings in a state court. *Deitzsch*, the original plaintiff in the action on the replevin bond, represented the real parties in interest, and he was a party to the action of replevin which had been pending and was finally determined in the United States circuit court. That court had jurisdiction of his person, and could enforce its judgment in the replevin suit against him, or those whom he represented, their agents and attorneys. The bill in this case was filed for that purpose, and that only. If the bill is not maintainable, the appellees would find themselves in precisely the same plight as if the judgment of the United States circuit court had been against them, instead of for them. The judgment in their favor would settle nothing. Instead of terminating the strife between them and their adversaries, it would leave them under the necessity of engaging in a new conflict elsewhere. This would be contrary to the plainest principles of reason and justice. As the bill in this case is filed for the purpose of giving to litigants on the law side of the court the substantial fruits of a judgment rendered in their favor, it is merely auxiliary to the suit at law; and the court has the right to enforce the judgment against the party defendant and those whom he represents, no matter how or when they may attempt to evade it or escape its effect, unless by direct proceeding."

¹⁶ "When a cause is legally removed to the federal court, all jurisdiction in the state court is at an end. The very cause itself being transferred, no case any longer exists in the state court. The state court is then absolutely without authority over the parties and subject-matter of the litigation. Whatever the state court could have done before the removal it is competent after removal for the federal court to do. An injunction in such case by the federal court, restraining the parties before it from proceeding elsewhere, is no injunction, within the spirit and intent of the statute staying proceedings in a state court, because after removal there is no proceeding left in the state court, and no jurisdiction to be interfered with. If, after removal, a party could continue or renew his litigation in the state court, the whole purpose of the removal might be defeated": *Wagner v. Drake*, 31 Fed. 849.

§ 641. **State Courts cannot Enjoin Proceedings of Federal Courts.**—It is well established that a state court cannot enjoin a proceeding or judgment of a federal court. The jurisdictions are independent, and there is no right in a state court to interfere. “The exemption of the authority of the courts of the United States from interference by legislative or judicial action of the states is essential to their independence and efficiency.”¹⁷

17 *Central Nat. Bank v. Stevens*, 169 U. S. 432, 18 Sup. Ct. 403, 837, 42 L. ed. 807, reviewing the authorities. See, also, *Farmers' Loan & Trust Co. v. Lake St. El. R. Co.*, 177 U. S. 51, 20 Sup. Ct. 564, 44 L. ed. 667 (reversing 173 Ill. 439, 51 N. E. 55, and holding that there is no right to enjoin when the federal court has first acquired jurisdiction). A good statement of the reasons for the doctrine is found in *Riggs v. Johnson Co.*, 6 Wall. 166, 18 L. ed. 768: “State courts are exempt from all interference by the federal tribunals, but they are destitute of all power to restrain either the process or the proceedings in the national courts. Circuit courts and state courts act separately and independently of each other, and in their respective spheres of action the process issued by the one is as far beyond the reach of the other as if the line of division between them was traced by landmarks and monuments visible to the eye. Appellate relations exist in a class of cases between the state courts and this court, but there are no such relations between the state courts and the circuit courts. Viewed in any light, therefore, it is obvious that the injunction of a state court is inoperative to control, or in any manner to affect, the process of proceedings of a circuit court; not on account of any paramount jurisdiction in the latter courts, but because in their sphere of action circuit courts are wholly independent of the state tribunals.” See, however, *Shaw v. Frey* (N. J. Eq.), 59 Atl. 811, where a state court enjoined the prosecution of an action in a federal court pending discovery. *Bergen, V. C.*, said: “The doctrine that a state court may never restrain a litigant in a federal court cannot, in my opinion, be supported by the adjudications of the supreme court of the United States. There are to be found in some of the reports expressions by the judges of that court which may, perhaps, bear that interpretation, but I have been unable to find any adjudication that establishes so broad a principle. . . . And while these cases, or some of them, contain the statement that state courts are devoid of all power to restrain either the process or proceedings of the national courts, it will be found upon examination that in every instance the question determined was the authority of the federal court to execute its judgments. . . . I can find no ex-

§ 642. Relief from Equitable Proceedings and Decrees.—

As a general rule, one court of equity will not enjoin the process of another of co-ordinate jurisdiction.¹⁸ Relief is obtainable by application to the court which has jurisdiction of the original suit. Occasionally, however, one court of equity will interfere with the proceedings of another, as where it is necessary to prevent a multiplicity of suits.¹⁹ Likewise, a court which has jurisdiction of an equitable action may enjoin the prosecution of another concerning the same subject-matter, subsequently begun in another court.²⁰ An injunction may be granted against prosecuting a suit in or enforcing a decree of the same court;²¹ and upon the principle

press adjudication holding that a state court having jurisdiction over the party is without power to restrain a litigant in a federal court, no federal question being involved, until he shall make such discovery of evidence as the rules of equity require." See, also, *Keith v. Alger* (Tenn.), 85 S. W. 71, where a judgment of a federal court was enjoined for extrinsic fraud.

18 *Vendall v. Harvey*, Nelson, 19; *Furnald v. Glenn*, 26 U. S. App. 202, 64 Fed. 49, 12 C. C. A. 27; *Central Trust Co. v. Evans*, 43 U. S. App. 214, 73 Fed. 562, 19 C. C. A. 563; *Corbin v. Casina Land Co.*, 26 App. Div. 408, 49 N. Y. Supp. 929. In Wisconsin, the principle is laid down strongly. "One court of equity will not enjoin the process of another. One suit in equity will not lie to enjoin process in issuing in another. The objection is fatal, whether the second suit be brought in the same or in another court, by a party or by a stranger to the first suit": *Endter v. Lennon*, 46 Wis. 299, 50 N. W. 194; *Platto v. Deuster*, 22 Wis. 482. To the effect that relief will not be awarded in a separate action when it could be had in the one pending, see *Waymire v. S. F. & S. M. Ry. Co.*, 112 Cal. 646, 44 Pac. 1086 (citing *Pom. Eq. Jur.*, §§ 1371, 1372); *Wolfe v. Titus*, 124 Cal. 264, 56 Pac. 1042; nor will a decree be enjoined on grounds which might have been set up in that action: *Moran v. Woodyard*, 8 B. Mon. 537. "An injunction ought not, as a rule, to be granted to restrain a person from making an application to the court to procure an injunction": *Balogh v. Lyman*, 6 App. Div. 271, 39 N. Y. Supp. 780. See, also, *Wallack v. Soc. Ref. Juv. Del.*, 67 N. Y. 23.

19 *Erie Ry. Co. v. Ramsey*, 45 N. Y. 641.

20 *Booth v. Leycester*, 3 Mylne & C. 459.

21 *Jackson v. Leaf*, 1 Jacob & W. 229; *Mann v. Flower*, 26 Minn. 479, 5 N. W. 365; *Bond v. Greenwald*, 7 Baxt. 466. To the effect that

of *quia timet*, an injunction may issue to restrain the prosecution of a suit not commenced, such as a suit to foreclose a mortgage.²²

§ 643. Probate Decrees.—It is said by some courts that equity has no jurisdiction to enjoin or set aside probate decrees obtained by fraud.²³ Except in jurisdictions where perjury is a ground for relief against judgments, cases in which equitable relief would be proper under

a bill may be maintained to correct a partition decree for mistake, see *Sullivan v. Lumsden*, 118 Cal. 664, 50 Pac. 777.

²² *Haeseig v. Brown*, 34 Mich. 503 (ground for decision not stated). As illustrations of the power to enjoin enforcement of equitable decrees, see *Brown v. Daniels* (Tenn.), 51 S. W. 991 (injunction against enforcement of decree in partition).

²³ Such a broad statement seems hardly warranted by the authorities. In *State v. McGlynn*, 20 Cal. 233, 81 Am. Dec. 118, the court, per Norton, J., said: "The court of chancery has no capacity, as the authorities have settled, to judge or decide whether a will is or is not a forgery; and hence there would be an incongruity in its assuming to set aside a probate decree establishing a will, on the ground that the decree was procured by fraud, when it can only arrive at the fact of such fraud by first deciding that the will was a forgery. There seems, therefore, to be a substantial reason, so long as a court of chancery is not allowed to judge of the validity of a will, except as shown by the probate, for the exception of probate decrees from the jurisdiction which courts of chancery exercise in setting aside other judgments obtained by fraud. But whether the exception be founded in good reason or otherwise, it has become too firmly established to be disregarded. At the present day, it would not be a greater assumption to deny the general rule that courts of equity may set aside judgments procured by fraud, than to deny the exception to that rule in the case of probate decrees." It is to be noted that the fraud in this case was intrinsic—forgery and perjury. Except for jurisdictions where perjury is a recognized ground for relief against judgments, the result is clearly correct.

For cases where relief has been granted, see *Gill v. Pelkey*, 54 Ohio St. 348, 43 N. E. 991 (correction of mistake); *Wright v. Fleming*, 76 N. Y. 517; *Baker v. O'Riordan*, 65 Cal. 368, 4 Pac. 232; *Benson v. Anderson*, 10 Utah, 135, 37 Pac. 256. See, also, cases collected in note 59, § 652.

For a discussion of equitable jurisdiction over probate matters in general, see *Pom. Eq. Jur.*, § 1154, and cases cited in notes.

the general principles are comparatively rare. A probate proceeding is generally *ex parte*. Cases do occur, however, in which a party is prevented, by some fraud or mistake, from having a hearing to which he is entitled; and under such circumstances, it would seem that equity should take jurisdiction.

§ 644. **No Injunction Against Criminal Proceedings.**—In general, a court of equity has no jurisdiction to enjoin criminal proceedings.²⁴ “To assume such a jurisdiction, or to sustain a bill in equity to restrain or relieve against proceedings for the punishment of offenses, . . . is to invade the domain of the courts of common law, or of the executive and administrative departments of the government.”²⁵ Moreover, in the United States it is held that such a suit is in effect against a state, and is therefore prohibited by the federal constitution.²⁶ While the general rule is well es-

²⁴ *Ex parte Sawyer*, 124 U. S. 200, 8 Sup. Ct. 482, 31 L. ed. 402; *Harkrader v. Wadley*, 172 U. S. 148, 19 Sup. Ct. 119; *Fitts v. McGhee*, 172 U. S. 516, 19 Sup. Ct. 269, 43 L. ed. 535; *Davis & Farnum Mfg. Co. v. Los Angeles*, 189 U. S. 207, 23 Sup. Ct. 498; *Suess v. Noble*, 31 Fed. 855; *Hemsley v. Myers*, 45 Fed. 283; *Central Trust Co. v. Citizens' St. R. Co.*, 80 Fed. 218; *Minneapolis Brewing Co. v. McGillivray*, 104 Fed. 258; *Arbuckle v. Blackburn*, 113 Fed. 613, 51 C. C. A. 122; *Portis v. Fall*, 34 Ark. 375; *New Home etc. Machine Co. v. Fletcher*, 44 Ark. 139; *Lecourt v. Gaster*, 49 La. Ann. 487, 21 South. 646; *Crighton v. Dahmer*, 70 Miss. 602, 13 South. 237, 21 L. R. A. 84; *State v. Wood*, 155 Mo. 425, 56 S. W. 474, 48 L. R. A. 596; *Davis v. American Society*, 75 N. Y. 362; *Greiner-Kelly Drug Co. v. Truett*, 97 Tex. 377, 79 S. W. 4. For a good discussion of the subject, see *Camden Interstate Ry. Co. v. City of Catlettsburg*, 129 Fed. 421, where it is said that the rule has two exceptions, viz.: (1) where the criminal proceedings are instituted by a party to a suit already pending, and to try the same thing that is in issue there; (2) where the proceedings have been provided to enforce a law which is unconstitutional because it invades the property rights of the complainant.

²⁵ *Ex parte Sawyer*, 124 U. S. 200, 8 Sup. Ct. 482, 31 L. ed. 402.

²⁶ *Ex parte Sawyer*, 124 U. S. 200, 8 Sup. Ct. 482, 31 L. ed. 402; *Fitts v. McGhee*, 172 U. S. 516, 19 Sup. Ct. 269, 43 L. ed. 535.

tablished, it has been intimated that when prosecutions "are threatened under color of an invalid statute for the purpose of compelling the relinquishment of a property right, the remedy in chancery is available."²⁷ There are also many cases in which the enforcement of void municipal ordinances, the execution of which directly affected property rights, have been enjoined, and criminal prosecutions before the municipal authorities restrained.²⁸

§ 645. When the Jurisdiction may be Exercised—First Class—Equitable Rights.—"I pass from this negative view to consider the doctrine on its affirmative side. The cases in which, according to its original jurisdiction unaffected by statute, equity may interfere by injunction, and restrain an action at law either before or after judgment, may be reduced to three general classes: 1. Where the controversy, in addition to its legal aspect, involves some equitable estate, right, or interest which is exclusively cognizable by a court of equity, so that a complete determination of the issues cannot be made by a court of law, it is well settled that equity not only may, but must, interfere at the suit of the party in whom the equitable estate or right is vested, and restrain the action at law, and decide the whole controversy. This is so when the defendant at law has a purely equitable defense which the court of law will not recognize or enforce, and especially when he is entitled to some affirmative equitable relief which will clothe him with a legal right or title, and thus de-

²⁷ *Central Trust Co. v. Citizens' St. R. Co.*, 80 Fed. 218; *Louisiana State Lottery Co. v. Fitzpatrick*, 3 Woods, 222, Fed. Cas. No. 8541. See, also, *Louisiana v. Lagarde*, 60 Fed. 186.

²⁸ For a discussion of the jurisdiction of equity to enjoin the enforcement of penal ordinances, see *ante*, volume I, chapter on Municipal Corporations.

feat the legal action brought against him. Cases of this kind belong to the first branch of the exclusive jurisdiction of equity as described in the first volume.²⁹ This rule assumes that the equitable questions contained in the defense extend to the entire cause, so that

²⁹ See Pom. Eq. Jur., § 219, and cases cited in note.

In the following cases injunctions were issued against prosecuting actions at law upon the ground that a complainant had an equitable defense not available at law: *Williams v. Earl of Jersey*, Craig & P. 91; *Evans v. Bremridge*, 8 De Gex, M. & G. 100; *Crofts v. Middleton*, 8 De Gex, M. & G. 192 (equitable defense to ejectment); *Earl of Aylesford v. Morris*, L. R. 8 Ch. 484; *Lord Tredegar v. Windus*, L. R. 19 Eq. 607; *Griswold v. Hazard*, 141 U. S. 260, 11 Sup. Ct. 972, 35 L. ed. 678; *Sullivan Timber Co. v. City of Mobile*, 110 Fed. 186 (equitable estoppel); *North British & Merc. Ins. Co. v. Lathrop*, 25 U. S. App. 443, 70 Fed. 429, 17 C. C. A. 175; *Frith v. Roe*, 23 Ga. 139; *Pindell v. Quinn*, 7 Ill. App. 605 (restraining suits interfering with management of receiver); *Ross v. Harper*, 99 Mass. 175; *Haescig v. Brown*, 34 Mich. 503; *De Moss v. Economy F. & C. Co.*, 74 Mo. App. 117 (equitable estoppel); *Clement v. Young-McShea Amusement Co.* (N. J. Ch.), 60 Atl. 419; *Skinner v. White*, 17 Johns. 357; *Tice v. Annin*, 2 Johns. Ch. 125; *County of Armstrong v. Brinton*, 47 Pa. St. 367; *Moses v. Sanford*, 2 Lea, 655 (equitable estoppel); *Metcalf v. Hart*, 3 Wyo. 513, 31 Am. St. Rep. 122, 27 Pac. 900, 31 Pac. 407. See, also, *Detroit etc. R. R. v. Brown*, 37 Mich. 533.

In the following cases relief was granted against judgments on account of equitable defenses: *Scott v. Shreeve*, 12 Wheat. 605, 6 L. ed. 744; *Johnson v. Christian*, 128 U. S. 374, 9 Sup. Ct. 87, 31 L. ed. 820 (equitable defense to ejectment); *Hawkins v. Wills*, 4 U. S. App. 274, 49 Fed. 506, 1 C. C. A. 339 (equitable defense to ejectment); *Miller v. Gaskins*, Smedes & M. Ch. 524; *Hibbard v. Eastman*, 47 N. H. 507, 93 Am. Dec. 467; *Barbour v. Nat. Exchange Bank*, 50 Ohio St. 90, 33 N. E. 542, 20 L. R. A. 192 (set-off); *Appeal of Given*, 121 Pa. St. 260, 6 Am. St. Rep. 795, 15 Atl. 468 (judgment entered under warrant of attorney, the consideration for which was an agreement to suppress a criminal prosecution); *Deaderick v. Mitchell*, 6 Baxt. 35; *Breeden v. Grigg*, 8 Baxt. 163; *Memphis & C. R. Co. v. Greer*, 87 Tenn. (3 Pickle) 698, 11 S. W. 931, 4 L. R. A. 858; *Ragsdale v. Hagy*, 9 Gratt. 409; *Franks v. Morris*, 9 W. Va. 664; *Jarrett v. Goodnow*, 39 W. Va. 602, 20 S. E. 575, 32 L. R. A. 321 (injunction to let in set-off when judgment creditor insolvent); *Greer v. Hale*, 95 Va. 533, 64 Am. St. Rep. 814, 28 S. E. 873. In *Gridley v. Garrison*, 4 Paige, 647, an injunction was issued to restrain the enforcement of a judgment in order to enable the complainant to

their decision determines the controversy. When the cause contains both legal and equitable questions which are distinct, the court of equity, while taking jurisdiction, may not restrain the proceedings at law prior to the obtaining of judgment."³⁰

obtain a set-off. This jurisdiction was exercised, although similar jurisdiction had been acquired by law courts, the court applying the principle that jurisdiction acquired by law courts does not oust equity of its jurisdiction. In *New York & H. R. Co. v. Haws*, 56 N. Y. 175, an injunction was issued restraining the enforcement of a judgment because of a defense arising subsequent to its rendition. It has been held that enforcement of a judgment may be enjoined although an appeal to the supreme court is pending: *Parker v. Maryland Cir. Ct. Judges*, 25 U. S. (12 Wheat.) 561, 6 L. ed. 729.

In the following case an injunction against an action at law was granted in aid of discovery: *King v. Clark*, 3 Paige, 76. The use of injunctions in such actions is illustrated in *Boughton v. Phillips*, 6 Paige, 433; *Williams v. Harden*, 1 Barb. Ch. 298.

Of course, if there is any equitable reason why equity should not aid a defense sought to be set up, relief will be denied: *Murray v. Toland*, 3 Johns. Ch. 569.

In the following cases relief was denied because the matter set up was as complete and as available a defense to the action at law, as it was a cause of action in equity: *Atkinson v. Allen*, 36 U. S. App. 255, 71 Fed. 58, 17 C. C. A. 570; *Zinn v. Dawson*, 47 W. Va. 45, 81 Am. St. Rep. 772, 34 S. E. 784.

A failure to interpose a defense good at law will not prevent the party from availing himself of an independent ground of relief in equity: *Greenlee v. Gaines*, 13 Ala. 198, 48 Am. Dec. 49.

The power of a court of equity to enjoin the prosecution of actions at law in order to prevent a multiplicity of suits is discussed at length in *Pomeroy's Equity Jurisprudence*, § 245 et seq.; see, especially, note to § 261. Only a few of the cases will be cited here. In the following cases injunctions were granted to prevent multiplicity of suits: *Virginia-Carolina Chem. Co. v. Home Ins. Co.*, 113 Fed. 1; *Woods v. Monroe*, 17 Mich. 238; *Albert Lea v. Nielsen*, 83 Minn. 101, 31 Am. St. Rep. 242, 82 N. W. 1104; *Paterson etc. R. R. v. Jersey City*, 9 N. J. Eq. 434; *Third Ave. R. R. v. Mayor*, 54 N. Y. 159; *Coville v. Gilman*, 13 W. Va. 314. On the other hand, relief was denied in *Henderson v. Flanagan*, 75 Ill. App. 283; *Andel v. Starkel*, 192 Ill. 206, 61 N. E. 356; *Imperial Fire Ins. Co. v. Gunning*, 81 Ill. 236; *Hartman v. Heady*, 57 Ind. 545; *Elridge v. Hill*, 2 Johns. Ch. 281; *West v. Mayor*, 10 Paige, 539; *Pennsylvania C. Co. v. Delaware etc. Co.*, 31 N. Y. 91; *Woodruff v. Fisher*, 17 Barb. 224.

³⁰ *Pom. Eq. Jur.*, § 1362. See *Hill v. Billingsly*, 53 Miss. 111;

§ 646. **Same—Second Class.**—"The second general class includes those cases which belong to the second branch of the exclusive jurisdiction of equity as heretofore described;³¹ or, in the ordinary nomenclature of the books, cases over the facts of which both courts of law and of equity have a concurrent jurisdiction to grant their respective and distinctive remedies; for example, cases involving actual fraud, such as suits upon instruments, where the defense is fraud in procuring their execution. Where the jurisdiction is thus said to be concurrent, or in other words, where the interests and primary rights of the parties are legal, and the only question between the two courts relates to the adequacy of their respective remedies, as a general rule the tribunal which first exercises jurisdiction is entitled, or at least permitted, to retain an exclusive control of the issues.³² It is therefore a well-settled doctrine that in cases of this kind, where the primary rights of both parties are legal, and courts of law will grant their remedies, and

Mitchell v. Oakley, 7 Paige, 68 (preliminary injunction refused); *Justice v. Scott*, 4 Ired. Eq. (39 N. C.) 108. "In the cases referred to, it is supposed that there are both legal and equitable issues which may be tried and decided separately, and the decision of neither determines the whole controversy. Of course, if the equitable issues are really the very gist of the whole cause, and upon their decision the whole case really turns, and the ends of justice demand it, the court of equity may take control of the entire controversy by enjoining the further prosecution of the action at law. It is only where the decision of the equitable issues would necessarily defeat the whole right at law and destroy the entire legal cause of action, that the chancellor *must* take the entire controversy under his own control. It is then a matter of right, and not of discretion": 4 Pom. Eq. Jur., § 1362, note 2.

³¹ See Pom. Eq. Jur., §§ 220, 221, and cases cited in note 2, under § 221.

³² See Pom. Eq. Jur., § 179; *Mallett v. Dexter*, 1 Curt. 178, Fed. Cas. No. 8988; *Winn v. Albert*, 2 Md. Ch. 42; *Merrill v. Lake*, 16 Ohio, 373, 47 Am. Dec. 377; *Thompson v. Hill*, 3 Yerg. 167; *Crane v. Bunnell*, 10 Paige, 333.

courts of equity may also grant their peculiar remedies, equity will not interfere to restrain the action or judgment at law, *provided the legal remedy will be adequate*; that is, provided the judgment at law will do full justice between the parties, and will afford a complete relief; the adequacy or inadequacy of the legal remedy is the sole and universal test.³³ On the other hand, in cases of this general class, equity will enjoin the action at law, and will determine the whole cause, whenever the legal remedy is inadequate; and the legal remedy is deemed to be inadequate if the ends of justice would not be satisfied by a mere judgment for the defendant in the action at law, but would require that some distinctively equitable relief, such as a cancellation or a reformation of the instrument sued upon, be conferred upon him. If any affirmative equitable relief is necessary to a full settlement of the controversy, and to a complete protection of the defendant's rights, a court of equity will interfere, entertain a suit

³³ See Pom. Eq. Jur., §§ 220, 221; *Mason v. Pigott*, 11 Ill. 85, Ross v. Buchanan, 13 Ill. 55; *Jackson v. Bell*, 31 N. J. Eq. 554, 32 N. J. Eq. 411; *Bumpass v. Reams*, 1 Sneed, 595; *Glastenbury v. McDonald's Admr.*, 44 Vt. 453. And see *Hoare v. Bremridge*, L. R. 8 Ch. 22, 14 Eq. 522. "Were a court of equity, in a case of concurrent jurisdiction, to try a cause, already tried at law, without the aid of any equitable circumstance to give jurisdiction, it would act as an appellate court, to affirm or reverse a judgment already rendered, on the same circumstances, by a competent tribunal. This is not the province of a court of chancery": *Smith v. McIver*, 9 Wheat. 532, 6 L. ed. 152, Marshall, C. J. See, also, *Ochsenbein v. Papelier*, L. R. 8 Ch. 695, where the rule was laid down by Selborne, L. C., as follows: "It is the rule of this court that in cases of concurrent jurisdiction this court ought not to interfere with any proceedings at law unless it has better means of doing justice between the parties than are possessed by a court of law. That may be the case either because a court of equity is able to give a more perfect remedy, or because the nature of the case admits of its being better tried by the procedure of this court than by that of a court of law."

for such relief, and enjoin the action at law.³⁴ The scope of this particular doctrine is plainly identical with that which governs the second branch of the exclusive jurisdiction of equity as described in the first volume. Whenever a court of equity exercises its jurisdiction over a case involving only *legal* interests and primary rights, for the purpose of awarding its exclusively equitable remedies, because the legal remedies would be inadequate, it will always, if necessary, enjoin an action at law which interrupts the full exercise of its jurisdiction."³⁵

§ 647. Same—Third Class.—“In the two preceding classes of cases the ground for interference was some equitable element or feature involved in the very subject-matter

³⁴ *Boyce's Exrs. v. Grundy*, 28 U. S. (3 Pet.) 210, 7 L. ed. 655; *Foltz v. St. Louis & S. F. Ry. Co.*, 19 U. S. App. 576, 60 Fed. 316, 8 C. C. A. 635; *Bissell v. Beckwith*, 33 Conn. 357; *Griffin v. Fries*, 23 Fla. 173, 11 Am. St. Rep. 351, 2 South. 266 (*dictum*); *Scott v. Scott*, 33 Ga. 102; *Radeliffe v. Varner*, 56 Ga. 222; *Morris v. Barnwell*, 60 Ga. 147; *Mitchell v. Word*, 60 Ga. 525; *Wyckoff v. Victor S. M. Co.*, 43 Mich. 309, 4 N. W. 405; *Henwood v. Jarvis*, 27 N. J. Eq. 247; *Hamilton v. Cummings*, 1 Johns. Ch. 517; *Dale v. Roosevelt*, 5 Johns. Ch. 174; *Athenaeum L. Assn. Soc. v. Pooley*, 3 De Gex & J. 294, 299; *Traill v. Baring*, 4 De Gex, J. & S. 318. The case of *Bomeisler v. Forster*, 154 N. Y. 229, 48 N. E. 534, 39 L. R. A. 240, presents a novel situation. The complainant was granted an injunction based upon a release which was a valid defense at law. The inadequacy of the legal remedy consisted in the fact that a trial at law would cause the publication of certain scandalous matter. “The difference to the plaintiff between a trial of the action at law, in which all the scandalous matters would be made public, and his reputation more or less affected, according as credence might be given to the statements and charges of the plaintiff therein, and a trial of the action in equity, where the issues would be confined to the question of whether there had been a release and settlement of all claims against him, which formed the basis of the complaint in the pending action, and an agreement not to sue further upon them, is quite perceptible and substantial.”

³⁵ Pom. Eq. Jur., § 1363. In some states it is held that one court cannot control the execution of the orders and process of another court

of the controversy, or in the remedies appropriate thereto, which constituted an equitable defense in full or in part to the legal action, and over which the court of equity had either a concurrent or an exclusive jurisdiction. In the present class there is no such equitable element or feature of the controversy; there is no equitable defense embraced in any possible issues, no equitable right or interest of the defendant which defeats or modifies the legal cause of action; all the issues are wholly legal. The ground for the equitable jurisdiction to interfere is, therefore, something *dehors* the issues, something arising out of or connected with the *trial* itself of the legal action in the court of law. It was a settled doctrine of the equitable jurisdiction—and is still the subsisting doctrine except where it has been modified or abrogated by statute, or has become obsolete through the enlarged powers of the law courts to grant new trials—that where the legal judgment was obtained or entered through fraud, mistake, or accident, or where the defendant in the action, having a valid legal defense on the merits, was prevented in any manner from maintaining it by fraud, mistake, or accident, and there had been no negligence, laches, or other fault on his part, or on the part of his agents, then a court of equity will interfere at his suit, and restrain proceedings on the judgment which cannot be conscientiously enforced. From the very nature of the case, this interference takes place after the judgment, and not while the action at law is pending.”³⁶

of equal jurisdiction: *Scott v. Runner*, 146 Ind. 12, 58 Am. St. Rep. 345, 44 N. E. 755; *Platto v. Duester*, 22 Wis. 484.

³⁶ Pom. Eq. Jur., § 1364. This section of Pom. Eq. Jur. is cited in *Hayes v. United States Phonograph Co.*, 65 N. J. Eq. 5, 55 Atl. 84; *Kirkhuff v. Kerr*, 57 N. J. Eq. 623, 42 Atl. 734; *Froebrich v. Lane* (Or.), 76 Pac. 351. See general statements in *Wingate v. Haywood*, 40 N. H. 437; *Marine Ins. Co. v. Hodgson*, 7 Cranch, 332, 3 L. ed. 362.

§ 648. **Rationale of the Doctrine.**—The ground for the exercise of this jurisdiction is that there has been no fair adversary trial at law. Consequently a distinction is made between fraud, accident, mistake and the like relating to the subject-matter of the action and similar elements relating to the conduct of the suit. Fraud relating to the subject-matter is not of itself sufficient ground for relief.³⁷ Where it relates to the conduct of the suit, as where it prevents a party from asserting his rights, there is no fair adversary proceeding, and equity will interfere. The courts commonly speak of the former class as intrinsic and of the latter as extrinsic, fraud, etc. Thus, it is generally said that it is extrinsic fraud, mistake and the like which are grounds for relief.

§ 649. **Fraud as a Ground for Relief.**—"Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, [or by] a false offer of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where the attorney regularly employed corruptly sells out his

³⁷ *Zellerbach v. Allenberg*, 67 Cal. 296, 7 Pac. 908; *Hendron v. Kinner*, 110 Iowa, 544, 81 N. W. 783; *Loughren v. B. F. Bonniwell & Co.* (Iowa), 101 N. W. 287; *Covington v. Chamblin*, 156 Mo. 574, 57 S. W. 728; *Moody v. Peyton*, 135 Mo. 482, 58 Am. St. Rep. 604, 36 S. W. 621; *Shufeldt v. Gandy*, 34 Neb. 32, 51 N. W. 302; *Boulton v. Scott's Admr.*, 3 N. J. Eq. 231; *Gardiner v. Van Alstyne*, 163 N. Y. 573, 57 N. E. 1110; *Ingalls v. Merchants' Nat. Bank*, 51 App. Div. 305, 64 N. Y. Supp. 911; *Mayor etc. of New York v. Brady*, 115 N. Y. 615, 22 N. E. 237. "The ground for the equitable jurisdiction to interfere is, therefore, something *dehors* the issues, something arising out of or connected with the *trial* itself of the legal action in the court of law": *Pom. Eq. Jur.*, § 1364.

client's interests to the other side—these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new trial and a fair hearing.”³⁸ It will be seen that the fraud here is not necessarily actual, legal fraud.

§ 650. **Violation of Stipulation or Agreement.**—Relief is very freely granted where a judgment is taken in violation of a stipulation or agreement as to the conduct of the suit. It is apparent that there is no fraud in the technical sense; such conduct does not fall within the definition of “actual” fraud—misrepresentation of existing facts. There is merely a breach of a contract; but the effects of such a breach are so manifestly against conscience that the courts will relieve, and base their jurisdiction on the ground of fraud. These stipulations may take various forms. Where an attorney represents that a case will not be called at a certain term of court, equity will enjoin or set aside a judgment entered at that term in the absence of the complainant.³⁹ Likewise, where there is an agreement that a case is not to be tried without notice, relief will be granted

³⁸ *United States v. Throckmorton*, 98 U. S. 61, 25 L. ed. 93. To the effect that the kinds of fraud here described do not generally fall within the definition of “actual” fraud, see 2 Pom. Eq. Jur., § 875.

³⁹ *De Louis v. Meek*, 2 G. Greene, 55, 50 Am. Dec. 491; *Bigham v. Kistler*, 114 Ga. 453, 40 S. E. 303; *Merriman v. Walton*, 105 Cal. 403, 45 Am. St. Rep. 50, 38 Pac. 1108, 30 L. R. A. 786. See, also, *Sanderson v. Voelker*, 51 Mo. App. 328 (agreement for continuance); *Mitchell v. Kirby*, 18 Ky. Law Rep. 961, 38 S. W. 507. See, however, *Norman v. Burns*, 67 Ala. 248, where relief was refused. The judgment was taken notwithstanding a verbal assurance of plaintiff's attorney that it would not be taken at that term of court. The case rests upon a statute providing that “no private agreement or consent, between the parties or their attorneys, relating to the

against a judgment entered without notice.⁴⁰ A party may rely upon a statement that an action will be dismissed, and if his opponent, in violation of such an agreement, takes judgment, equitable relief is proper.⁴¹ Where a party induces another to allow judgment to be taken against him upon the representation that it is not to be enforced against him, or that if the amount shall turn out to be too large, it will be corrected, an injunction will issue to prevent the enforcement of the judgment in violation of the agreement.⁴² Equity will

proceedings in any cause'' shall be binding unless in writing. A mere vague and uncertain suggestion on which it was negligent to rely is not ground for relief: *German Fire Ins. Co. v. Perry*, 45 Ill. App. 197.

⁴⁰ *How v. Mortell*, 28 Ill. 479.

⁴¹ *Huggins v. King*, 3 Barb. 616; *Cadwallader v. McClay*, 37 Neb. 359, 40 Am. St. Rep. 496, 55 N. W. 1054; *Greenwaldt v. May*, 127 Ind. 511, 22 Am. St. Rep. 660, 27 N. E. 158. In *Engel v. Scheuerman*, 40 Ga. 206, 2 Am. Rep. 573, S. obtained judgments against E. in two states on the same cause of action. E. settled one upon the promise that the other would be dismissed. It was held that E. could enjoin the enforcement of the second judgment. In *Dallin v. McIvor*, 12 Ind. App. 150, 39 N. E. 765, the defendant at law was shown an agreement to dismiss which was given to a co-defendant. This was held ground for setting aside a default. In *Hamilton v. Wood*, 55 Minn. 482, 57 N. W. 208, the debtor paid the claim after the suit was brought and the creditor agreed to dismiss. Instead of doing this he took judgment surreptitiously. An injunction was awarded. In *McLeran v. McNamara*, 55 Cal. 508, a plaintiff took a judgment in violation of a written stipulation on file dismissing the suit, fifteen years later. An injunction was allowed although the plaintiff at law claimed that he did not know of the stipulation. In *Pelham v. Moreland*, 11 Ark. 442, an attorney stipulated that an answer need not be filed, and then took judgment. Relief was granted.

⁴² Thus, it is proper when a surety allows judgment under an agreement that it is to be used only as a means of collection from the principal, and the judgment creditor subsequently attempts to enforce against the surety: *Cage v. Cassidy*, 64 U. S. (23 How.) 109, 16 L. ed. 430; *Baker v. Redd*, 44 Iowa, 179; *Union Bank v. Geary*, 5 Pet. 99, 8 L. ed. 60; *Kelley v. Kriess*, 68 Cal. 211, 9 Pac. 122. In *Keighler v. Savage Mfg. Co.*, 12 Md. 383, 71 Am. Dec. 600,

also relieve against a judgment obtained in violation of a compromise agreement.⁴³ An inferior court has enjoined the enforcement of an order made by a higher court, surreptitiously and fraudulently obtained. Thus, where a judgment obtained by consent was reversed in the appellate court because the consent did not appear of record, the lower court granted relief, and its decision was sustained on appeal.⁴⁴ In general, whenever a party has been lulled into inaction by the promises, stipulations or representations of the prevailing party, relief will be granted because of the unconscionable conduct.⁴⁵ If, however, the promises, stipulations or representations are such that the defendant

there was an agreement that a judgment was to be used only as security. The court said: "If, as alleged in this case, the judgment was agreed and understood by the parties to it to be, not an ascertainment of so much indebtedness, but only as a security for so much as thereafter might be ascertained to be due, then in such a case it would be a fraud on the part of the appellants to use it for a purpose different from that of the agreement, and a court of equity would enjoin them from doing so." In *Perry v. Johnston*, 95 Fed. 322, one defendant at law did not make a defense, relying upon an agreement that the same judgment should be entered against him as against others. It was held that an injunction was proper when a different judgment was allowed to stand. See, also, in support of the text, *Hinckley v. Miles*, 15 Hun, 170; *Purviance v. Edwards*, 17 Fla. 140; *Shufeldt v. Gandy*, 25 Neb. 602, 41 N. W. 553; *Poindexter v. Waddy*, 6 Munf. 418, 8 Am. Dec. 749. In *Delaney v. Brown*, 72 Vt. 344, 47 Atl. 1067, a party did not file a bill of review in time, relying upon a statement that a judgment would not be enforced against him. It was held that he was entitled to an injunction.

⁴³ *Murphy v. Smith*, 86 Mo. 333; *Brake v. Payne*, 137 Ind. 479, 37 N. E. 140.

⁴⁴ *Bank of Kentucky v. Hancock's Admr.*, 36 Ky. (6 Dana) 284, 32 Am. Dec. 76.

⁴⁵ *Markham v. Angier*, 57 Ga. 43 (inducing defendants to withdraw an equitable plea by a promise to do the equity set up in the plea); *Brooks v. Whitson*, 7 Smedes & M. 513 (attorney was prevented from making a plea on representation that no defense was to be made); *Webster v. Skipwith*, 26 Miss. 341 (statement as

at law was not justified in relying upon them, relief will be denied.⁴⁶

§ 651. **Miscellaneous Instances of Unconscionable Conduct.**—The unconscionable conduct may assume many forms. If an attorney employed to defend a case proves false to his trust and, in conjunction with his opponent, allows judgment to go against his client, a clear case for equitable relief is made out.⁴⁷ Likewise, if a director of a corporation defendant, or any other person occupying a fiduciary position, fraudulently allows judgment to be taken without attempting to have a defense made, equity will relieve.⁴⁸ Collusion is a well-

to purpose of suit); *Booth v. Stamper*, 6 Ga. 172 (stipulation as to manner of trial); *Stroup v. Sullivan*, 2 Ga. (2 Kelly) 275, 46 Am. Dec. 389; *Pearce v. Olney*, 20 Conn. 544; *Fox v. Robbins* (Tex. Civ. App.), 62 S. W. 815; *Brooks v. Twitchell*, 182 Mass. 443, 94 Am. St. Rep. 662, 65 N. E. 843 (agreement not to take advantage of delay in making appearance); *Klabunde v. Byron-Reed Co.* (Neb.), 98 N. W. 182; *Moore v. Lipscombe*, 82 Va. 546; *Holland v. Trotter*, 22 Gratt. 136; *Dodge v. Williams*, 107 Ga. 410, 33 S. E. 468. In *Heim v. Butin*, 109 Cal. 500, 50 Am. St. Rep. 54, 42 Pac. 138, an injunction was sought against a judgment because of a promise not to enter a personal judgment. Relief was refused on the ground that there was no consideration for the promise.

⁴⁶ *Jarboe v. Kepler*, 4 Ind. 177; *English v. Aldrich*, 132 Ind. 500, 32 Am. St. Rep. 270, 31 N. E. 456 (equity will not set aside judgment on ground of mistake when party relied upon statement of clerk in office of plaintiff's attorney instead of upon allegations in complaint).

⁴⁷ *Pacific R. R. Co. of Mo. v. Mo. Pac. R. Co.*, 111 U. S. 520, 4 Sup. Ct. 583, 28 L. ed. 504; *Sanford v. White*, 132 Fed. 531; *Renner v. Kannally*, 193 Ill. 212, 61 N. E. 1026; *Sasser v. Olliff*, 91 Ga. 84, 16 S. E. 312. Any fraud or misrepresentation by one's own attorney in the interest of the adversary is ground for relief: *Smith v. Quarles* (Tenn. Ch. App.), 46 S. W. 1035; *Chadron v. Anderson* (Wyo.), 48 Pac. 197. See, also, *People v. Perris Irr. Dist.*, 142 Cal. 601, 76 Pac. 381.

⁴⁸ *Pacific R. R. Co. v. Mo. Pac. R. Co.*, 111 U. S. 520, 4 Sup. Ct. 583, 28 L. ed. 504; *Street v. Alden*, 62 Minn. 160, 52 Am. St. Rep. 632, 64 N. W. 157 (minority member of board of supervisors); *Lang Synø G. M. Co. v. Ross*, 20 Nev. 127, 19 Am. St. Rep. 337, 18 Pac. 358.

established ground. In such cases the bill for relief is generally brought by a third party who is injured by the collusive conduct of the parties to the original action. The rule seems to be that whenever the existence of a judgment, or the uses of which it is capable, and which are imminent, injuriously affect the rights or remedies of a stranger to it, he may by original bill attack it for fraud or collusion.⁴⁹ Such, for instance, may be creditors' bills, and bills by legatees against executors and administrators. Such, also, is a bill brought by citizens to set aside a writ of mandate to compel a canvass of votes, obtained by collusion between the relator and the defendant.⁵⁰ Of course where collusion is between a trustee and a claimant, the *cestui* is entitled to relief.⁵¹ One who prevents his opponent from answering by fraudulently waiting until he goes out of the jurisdiction before bringing suit, or by wrongfully having him confined in an asylum, or by inducing him to leave the country, is guilty of such unconscionable conduct that equity will readily interfere.⁵² Where the prevailing party tampers with the jury, an injunction may issue if the facts are discovered

⁴⁹ First Nat. Bank of Decatur v. Pullen, 129 Ala. 638, 29 South. 685; Richardson v. Loree, 94 Fed. 375, 36 C. C. A. 301; Bement v. Ohio V. B. & T. Co., 99 Ky. 109, 59 Am. St. Rep. 445, 35 S. W. 139; Burnett v. Milnes, 148 Ind. 230, 46 N. E. 464; Elting v. First Nat. Bank, 173 Ill. 368, 50 N. E. 1095; First Baptist Church v. Syms, 51 N. J. Eq. 363, 28 Atl. 461; Grand Rapids, S. F. Co. v. Haney, 92 Mich. 558, 31 Am. St. Rep. 611, 52 N. W. 1009, 16 L. R. A. 721.

⁵⁰ State v. Matley, 17 Neb. 564, 24 N. W. 200.

⁵¹ Wright v. Miller, 8 N. Y. 9, 59 Am. Dec. 438; Warren v. Union Bank, 157 N. Y. 259, 68 Am. St. Rep. 777, 51 N. E. 1036, 43 L. R. A. 256 (guardian and ward).

⁵² Nelson v. Rockwell, 14 Ill. 375; Lockwood v. Mitchell, 19 Ohio, 448, 53 Am. Dec. 438; Colby v. Colby, 59 Minn. 432, 50 Am. St. Rep. 420, 61 N. W. 460. In this last case a husband sent his wife abroad and then brought suit for divorce. He purposely failed to send her money, so she was unable to return home to contest the case.

at so late a time that legal relief cannot be secured.⁵³ If the judge himself is a party to the fraud, the ground for interference is especially strong; and in such a case it need not be shown that he intentionally did wrong.⁵⁴ It is ground for relief when a party attempts to take advantage of an error of the clerk in failing to properly enter an order of the court.⁵⁵

§ 652. Same—Continued.—Where it has appeared that a probate court has awarded the whole estate of an intestate to a brother, omitting entirely the widow, who understood little of the English language, relief has been granted.⁵⁶ These facts were held sufficient to show that the court either labored under a mistake or was fraudulently imposed upon. Again, where the defendant has not appeared and a personal judgment has been taken, although unauthorized by the petition, an injunction has issued.⁵⁷ Where money is fraudulently coerced by a judgment fraudulently obtained, it is sometimes held that it may be recovered in equity, without the formality of obtaining a new trial or setting aside

⁵³ *Platt v. Threadgill*, 80 Fed. 192. In this case, the action was to recover the value of certain cigars. The plaintiff at law conducted three jurors to his place of business and gave each a box of cigars, during the trial.

⁵⁴ Thus, in *Baldwin v. Davidson*, 139 Mo. 118, 61 Am. St. Rep. 460, 40 S. W. 765, a probate judge, when told by the attorney for heirs, prior to filing of administrator's final settlement, that he desired to contest the same, informed him that if when the settlement was filed, it should be fair on its face he would approve it, and the heirs could then appeal. It was approved without giving any opportunity to be heard. The lower court held that the judge acted honestly and without fraud; but on appeal it was held that the conduct was so fraudulent as to make equitable relief imperative.

⁵⁵ *Turner v. Colson*, 21 Ky. Law Rep. 1390, 55 S. W. 551; *Williams v. Pile*, 104 Tenn. 273, 56 S. W. 833.

⁵⁶ *Benson v. Anderson*, 10 Utah, 135, 37 Pac. 256.

⁵⁷ *Larson v. Williams*, 100 Iowa, 110, 62 Am. St. Rep. 544, 63 N. W. 464, 69 N. W. 441.

the judgment.⁵⁸ Where an order or decree in a probate matter is obtained by fraud, relief may sometimes be granted.⁵⁹ Many cases upholding the general doctrine in its various phases are appended in the note.⁶⁰

⁵⁸ *Ellis v. Kelley*, 8 Bush, 621.

⁵⁹ *Johnson v. Waters*, 111 U. S. 667, 4 Sup. Ct. 619, 28 L. ed. 556; *Silva v. Santos*, 138 Cal. 536, 94 Am. St. Rep. 45, 71 Pac. 703; *Aldrich v. Barton*, 138 Cal. 220, 94 Am. St. Rep. 43, 71 Pac. 169; *Freebrich v. Lane (Or.)*, 76 Pac. 351. See *ante*, § 643.

⁶⁰ The case of *Wagner v. Shank*, 59 Md. 313, is a remarkable example of fraud. Over a thousand suits were brought by one party on fictitious claims against various defendants before two justices of the peace. The defendants employed counsel, who went to the residence of the magistrate. After some conversation, the magistrate agreed to dismiss the cases, and signed a paper to this effect. The counsel took this paper and gave it to one of his clients, and informed all of them that the suits had been dismissed. Shortly afterward, without notice to the counsel or to any one of the defendants, the magistrate proceeded to enter up the judgments on his docket. No execution was issued on any one of these judgments until long after the time for appeal had elapsed; and neither the defendants, nor their counsel, had any knowledge of such judgments until nearly a year after they had been rendered. An injunction was issued against their execution. In the following cases the general rule is stated and applied: *Davis v. Tileston*, 47 U. S. (6 How.) 114, 12 L. ed. 366; *Sayers v. Burkhardt*, 85 Fed. 246, 29 C. C. A. 137; *Merrill v. First Nat. Bank*, 94 Cal. 59, 29 Pac. 242; *Gates v. Steele*, 58 Conn. 316, 18 Am. St. Rep. 268, 20 Atl. 474; *Norwood v. Richardson (Del.)*, 57 Atl. 244; *Snelling v. American Freehold Land Mort. Co.*, 107 Ga. 852, 73 Am. St. Rep. 60, 33 S. E. 634; *Everett v. Tabor*, 119 Ga. 128, 46 S. E. 72; *Schroer v. Pettibone*, 163 Ill. 42, 45 N. E. 207; *Devoll v. Scales*, 49 Me. 320; *Payne v. Payne*, 97 Md. 678, 55 Atl. 368; *Scriven v. Hursh*, 39 Mich. 98; *State v. Engelmann*, 86 Mo. 551; *Tapana v. Shaffray*, 97 Mo. App. 337, 71 S. W. 119; *Perry v. Siter*, 37 Mo. 273; *Herbert v. Herbert*, 49 N. J. Eq. 565, 25 Atl. 366; *Truitt v. Darnell*, 65 N. J. Eq. 221, 55 Atl. 692; *United Security Life Ins. & Tr. Co. v. Ott (N. J. Ch.)*, 26 Atl. 923; *Miller v. Harrison*, 32 N. J. Eq. 76; *Semple v. Cleveland & P. R. Co.*, 172 Pa. St. 369, 33 Atl. 564, 37 Wkly. Not. Cas. 365; *Given's Appeal*, 121 Pa. St. 260, 6 Am. St. Rep. 795, 15 Atl. 468; *Wistar v. McManus*, 54 Pa. St. 318, 93 Am. Dec. 700; *Wheeler v. Alderman*, 34 S. C. 533, 27 Am. St. Rep. 842, 13 S. E. 673; *Lumpkin v. Williams*, 1 Tex. Civ. App. 214, 21 S. W. 967; *Williams v. Lumpkin*, 86 Tex. 641, 26 S. W. 493; *Huff v. Miller (Tenn. Ch. App.)*, 58 S. W. 876; *Dandridge v. Harris*, 1 Wash. (Va.) 326, 1 Am. Dec.

§ 653. **Fraud Subsequent to Trial.**—Relief may be granted to a party injured by the fraudulent conduct of his opponent after the trial. Thus, where too large an amount is fraudulently entered in a decree by counsel, or where one decree is fraudulently substituted for another, equity may interfere;⁶¹ but the mere fact that an attorney, requested by a judge to frame a decree, acts fraudulently, is no ground for relief unless it is affirmatively shown that the judge has been imposed upon.⁶² It will be presumed that the judge has done his duty. An injunction may issue to restrain a party from keeping a judgment alive after it has been satisfied.⁶³ Not only may the defendant at law obtain equitable relief, but the plaintiff as well may in a proper case invoke its aid. Thus, where a plaintiff releases one of two joint debtors upon the urgent request of the other, and upon a promise by such other to pay, an injunction will issue to restrain such a party from taking advantage of his right at law to cancel the judgment.⁶⁴

§ 654. **Fraudulent Concealment.**—Fraudulent concealment is sometimes relied upon as a ground for equitable relief against judgments. In order that concealment shall be ground for any equitable relief, there must be a duty to disclose. Ordinarily when there are two parties on an equal footing before the court, there is no such duty. The concealment which is ground for relief generally arises in an *ex parte* proceeding where the

465; Griffith v. Griffith (Tenn. Ch. App.), 46 S. W. 340; Carrington v. Holabird, 17 Conn. 530, 19 Conn. 84. This subject is discussed in a monographic note, 54 Am. St. Rep. 236 ff.

⁶¹ Peek Lateral Ditch Co. v. Pella Irr. Ditch Co., 19 Colo. 222, 34 Pac. 988; McTeer v. Briscoe (Tenn. Ch. App.), 61 S. W. 564.

⁶² Weaver v. Vanderwanter, 84 Tex. 691, 19 S. W. 889.

⁶³ Robinson v. Davis, 11 N. J. Eq. 302, 69 Am. Dec. 591.

⁶⁴ Cregar v. Cramen, 31 N. J. Eq. 375.

court is deceived by facts concealed by the applicant for relief.⁶⁵ Where fraudulent concealment is relied upon for the purpose of impeaching and setting aside a judgment regularly obtained, it must be an intentional concealment of a material or controlling fact, for the purpose of misleading or taking an undue advantage of the opposite party.⁶⁶ That the adversary has not communicated facts which tend to defeat his claim or to impeach his witnesses is not ground for relief.⁶⁷ An adversary cannot be expected to furnish the means for his defeat.

§ 655. *Instances of Refusal of Relief.*—Relief in equity will be refused where it appears that the fraud, even if attempted, was not successful.⁶⁸ The mere fact that there is prejudice in the community which may prevent a fair trial is not ground for relief, for there is an adequate remedy at law;⁶⁹ nor does the fact that complainant was not notified of a default judgment show any unconscionable conduct.⁷⁰ The mere filing of a brief, surreptitiously perhaps, cannot be taken advantage of, for the court is not supposed to decide the case upon the

⁶⁵ *Wickersham v. Comerford*, 96 Cal. 433, 31 Pac. 358; *Curtis v. Schell*, 129 Cal. 208, 79 Am. St. Rep. 107, 61 Pac. 951; *Sohler v. Sohler*, 135 Cal. 323, 87 Am. St. Rep. 98, 67 Pac. 282.

⁶⁶ *Ward v. Town of Southfield*, 102 N. Y. 287, 6 N. E. 660; *Tucker v. Whittlesey*, 74 Wis. 74, 41 N. W. 535, 42 N. W. 101; *Tomkins v. Tomkins*, 11 N. J. Eq. 512.

⁶⁷ *Mosby v. Gisborn*, 17 Utah, 257, 54 Pac. 121; *Taylor v. Bradshaw*, 22 Ky. (6 T. B. Mon.) 145, 17 Am. Dec. 132; *Long v. Gilbert* (Tenn. Ch. App.), 59 S. W. 414; *Nye v. Sochor*, 92 Wis. 40, 53 Am. St. Rep. 896, 65 N. W. 854.

⁶⁸ *Allen v. Allen*, 97 Fed. 525, 38 C. C. A. 336.

⁶⁹ *Graham v. Citizens' Nat. Bank*, 45 W. Va. 701, 32 S. E. 245.

⁷⁰ *Trustees of Amherst College v. Allen*, 165 Mass. 178, 42 N. E. 570.

briefs.⁷¹ Other cases where it was held that no fraud was shown are appended in the note.⁷²

§ 656. Perjury.—The courts hold that perjury is intrinsic fraud and that therefore it is not ground for equitable relief against a judgment resulting from it. We have seen that the fraud which warrants equity in interfering with such a solemn thing as a judgment must be fraud in obtaining the judgment, and must be such as prevents the losing party from having an adversary trial of the issue. Perjury is a fraud in obtaining the judgment, but it does not prevent an adversary trial. The losing party is before the court and is well able to make his defense. His opponent does nothing to prevent it. This rule seems harsh, for often a party will lose valuable rights because of the perjury of his adversary. However, public policy seems to demand that there be an end to litigation. If perjury were accepted as a ground for relief, litigation might be endless; the same issues would have to be tried repeatedly. As stated in a leading case, “the wrong, in such case, is of course a most grievous one, and no doubt the legislature and the courts would be glad to redress it if a rule could be devised that would remedy the evil without producing mischiefs far worse than the evil to be remedied. Endless litigation, in which nothing was ever finally determined, would be worse than occasional miscarriages of justice; and so the rule is, that a final judgment cannot be annulled merely because it can be shown to have been based on perjured testimony; for if this could be done once, it could be done again and

⁷¹ *Cox v. Bank of Hartsville* (Tenn. Ch. App.), 63 S. W. 237.

⁷² *Mason v. House*, 20 Tex. Civ. App. 500, 49 S. W. 911; *McDonald v. Pearson*, 114 Ala. 630, 21 South. 534; *Wright v. Smith*, 13 App. Div. 536, 43 N. Y. Supp. 728; *Cayce v. Powell*, 20 Tex. 767, 73 Am. Dec. 211.

again *ad infinitum*.”⁷³ And to use the language of an eminent court, “the maxim that fraud vitiates every proceeding must be taken, like other general maxims, to apply to cases where proof of fraud is admissible. But where the same matter has been actually tried, or so in issue that it might have been tried, it is not again admissible; the party is estopped to set up such fraud, because the judgment is the highest evidence and cannot be contradicted.”⁷⁴

In accordance with the principles laid down above, it is held, by the weight of authority, that neither perjury nor forgery is sufficient ground for equitable interference.⁷⁵ There is quite respectable authority, however, the other way, and many are disposed to regard this minority rule as more in accordance with justice.⁷⁶

⁷³ *Pico v. Cohn*, 91 Cal. 129, 25 Am. St. Rep. 159, 25 Pac. 970, 27 Pac. 537, 13 L. R. A. 336.

⁷⁴ *Greene v. Greene*, 2 Gray, 361, 61 Am. Dec. 454.

⁷⁵ *United States v. Throckmorton*, 98 U. S. 61, 25 L. ed. 93; *Vance v. Burbank*, 101 U. S. 514, 25 L. ed. 929; *Pico v. Cohn*, 91 Cal. 129, 25 Am. St. Rep. 159, 25 Pac. 970, 27 Pac. 537, 13 L. R. A. 336; *United States v. Beebe*, 180 U. S. 343, 21 Sup. Ct. 371, 45 L. ed. 563; *Steen v. March*, 132 Cal. 616, 64 Pac. 994; *Wilkins v. Sherwood*, 55 Minn. 154, 56 N. W. 591; *Woodruff v. Johnston*, 61 N. Y. Sup. Ct. 348, 19 N. Y. Supp. 861; *Camp v. Ward*, 69 Vt. 286, 60 Am. St. Rep. 929, 37 Atl. 747; *Heathcote v. Haskins*, 74 Iowa, 566, 38 N. W. 417; *Maryland Steel Co. v. Marney*, 91 Md. 360, 46 Atl. 1077; *Greene v. Greene*, 2 Gray, 361, 61 Am. Dec. 454; *Wabash R. Co. v. Mirrieles*, 182 Mo. 128, 81 S. W. 437; *Farmers' & Shippers' L. T. Warehouse Co. v. Pridemore (W. Va.)*, 47 S. E. 258; *Estes v. Timmons*, 12 Okla. 537, 73 Pac. 303; *Noll v. Chattanooga Co. (Tenn. Ch. App.)*, 38 S. W. 287; *Evans v. Woodsworth*, 213 Ill. 494, 72 N. E. 1082.

⁷⁶ *Barr v. Post*, 59 Neb. 361, 80 Am. St. Rep. 680, 80 N. W. 1041; *Munro v. Callahan*, 55 Neb. 75, 70 Am. St. Rep. 366, 75 N. W. 151; *Secord v. Powers*, 61 Neb. 615, 87 Am. St. Rep. 474, 85 N. W. 846; *Peagram v. King*, 9 N. C. 295, 11 Am. Dec. 793; *Meyers v. Smith*, 59 Neb. 30, 80 N. W. 273; *Miller v. Miller's Estate (Neb.)*, 95 N. W. 1010; *Avocato v. Dell' Ara (Tex. Civ. App.)*, 84 S. W. 443. In Minnesota it is provided by statute “that in all cases where judgment heretofore has been, or hereafter may be, obtained in any

In Nebraska the cases cited lay down the rule that the intentional production by a litigant of false testimony to establish his cause of action or defense amounts to such a fraud as will, in a proper case, entitle the adverse party, if unsuccessful, to the vacation of the judgment rendered against him. In a late case, however, it is said that actions of this kind are not to be encouraged, for public policy demands that there shall be an end to litigation.⁷⁷ In some jurisdictions it is laid down that evidence of perjury is not sufficient ground for relief unless it appears to a reasonable certainty that, but for such testimony, the judgment would have been different.⁷⁸ In one case a distinction is attempted between actions at law and suits in equity, the contention being that perjury in an equity case is ground for relief.⁷⁹ In Washington and Oregon the general rule is guarded

court of record by means of perjury, subornation of perjury, or any fraudulent act, practice or representation of the prevailing party, an action may be brought by the party aggrieved to set aside said judgment at any time within three years after the discovery by him of such perjury, subornation of perjury, or of the facts constituting such fraudulent act, practice or representation": Gen. Stats. 1878, c. 66, sec. 285. In *Stewart v. Duncan*, 40 Minn. 410, 42 N. W. 89, it was held that "this statute is in derogation of the well-established and salutary principle and policy of the common law, which forbids the retrial of issues once determined by a final judgment, and that the statute should not, therefore, be so construed as to extend its operation beyond its most obvious import." In *Watkins v. Landon*, 67 Minn. 136, 69 N. W. 711, the rule is stated as follows: "When an issue is squarely made in a case, so that each party knows what the other will attempt to prove, and neither has a right, or is under any necessity, to depend on the other proving the fact as he himself claims it, the mere allegation by the defeated party that there was, as to such issue, false or perjured testimony by the successful party or his witnesses will not bring his case within the meaning of the statute." See, also, *Hass v. Billings*, 42 Minn. 63, 43 N. W. 797; *Moudry v. Witzka*, 89 Minn. 300, 94 N. W. 885.

⁷⁷ *Barr v. Post*, 59 Neb. 361, 80 Am. St. Rep. 680, 80 N. W. 1041.

⁷⁸ *Wood v. Davis*, 108 Fed. 130; *Holton v. Davis*, 108 Fed. 138, 47 C. C. A. 246.

⁷⁹ *Graver v. Faurot*, 76 Fed. 257, 22 C. C. A. 156.

with limitations which appear to mitigate its harshness without contravening its policy.⁸⁰ It would seem correct to hold that while perjury itself may not be ground for relief, it may be considered along with other circumstances to show a fraudulent intent.⁸¹

It would appear that a distinction might properly be drawn between cases in which two parties are before the court and *ex parte* proceedings. In the latter there is no adversary trial, so on principle there is no reason why relief should not be granted.⁸² Such was the holding in at least one state, California, but later decisions in that state have now greatly narrowed the exception as to *ex parte* proceedings. It is held that where there is a fraudulent concealment in connection with the perjury, equitable relief will be granted.⁸³ It is dif-

⁸⁰ In *McDougall v. Walling*, 21 Wash. 478, 75 Am. St. Rep. 669, 58 Pac. 669, it is held that perjury does not constitute such a fraud as will authorize the vacation of a judgment, except under circumstances that deceive the opposite party as to the nature of the testimony, and relieve him of the implication of want of diligence in discovering its falsity. In *Friese v. Hummel*, 26 Or. 145, 46 Am. St. Rep. 610, 37 Pac. 458, it is held that a decree will not be set aside for perjury and fraud, unless the perjury and fraud are collateral to the questions examined and determined in the action.

⁸¹ *Colby v. Colby*, 59 Minn. 420, 50 Am. St. Rep. 420, 61 N. W. 460.

⁸² *Wickersham v. Comerford*, 96 Cal. 433, 31 Pac. 358; *Dunlap v. Steere*, 92 Cal. 344, 27 Am. St. Rep. 143, 28 Pac. 563, 16 L. R. A. 361. In this latter case the court said, referring to the general rule as laid down in *United States v. Throckmorton*, 98 U. S. 61, 25 L. ed. 93: "But the rule there announced is only applicable where the former judgment was the result of a trial between the parties, or where the one against whom the judgment was rendered had actual notice of the pendency of the action, and neglected to submit his proofs."

⁸³ In the following cases of *ex parte* proceedings relief was denied: *Fealey v. Fealey*, 104 Cal. 354, 43 Am. St. Rep. 111, 38 Pac. 49; *Hanley v. Hanley*, 114 Cal. 690, 46 Pac. 736. In the following cases relief was granted: *Curtis v. Schell*, 129 Cal. 208, 79 Am. St. Rep. 107, 61 Pac. 951; *Sohler v. Sohler*, 135 Cal. 323, 87 Am. St. Rep. 98, 67 Pac. 282.

difficult to imagine any ground upon which such a distinction can be upheld. Whether there is active perjury or passive concealment, there is still a fraud upon the court. To the average mind it will seem that an active falsehood is stronger ground for relief than passive concealment.

§ 657. **Accident, Mistake and Surprise—In General.**—Relief is frequently granted where, on account of accident, mistake or surprise, a party has, without his fault, been deprived of or caused not to present some cause of action or matter of defense. The complaining party must not be at fault.⁸⁴

§ 658. **Accident.**—The accident which is ground for relief in equity against a judgment must consist in circumstances beyond the control of the complaining party, which prevent him from obtaining proper relief. As in the case of fraud, the accident must relate to extrinsic matters, rather than to intrinsic. A most common illustration is where a party, without laches on his part, loses the benefit of a bill of exceptions by the death or illness of a judge, so that it cannot be signed and sealed. In such a case equity will interfere and grant proper relief.⁸⁵ Likewise it has been held that where a statement of a case upon appeal has been lost without fault of the attorneys for the appellant, and, by reason of lapse of time, the judge is unable to settle the bill of

⁸⁴ Pom. Eq. Jur., §§ 836, 871, 1364.

⁸⁵ *State v. Weiskittle*, 61 Md. 49; *Kansas & A. V. Ry. Co. v. Fitzhugh*, 61 Ark. 341, 54 Am. St. Rep. 211, 33 S. W. 960; *Little Rock & F. S. Ry. Co. v. Wells*, 61 Ark. 354, 54 Am. St. Rep. 216, 33 S. W. 208; *Wright v. Judge*, 41 Mich. 726, 49 N. W. 925; *Grafton & G. R. Co. v. Davisson*, 45 W. Va. 12, 72 Am. St. Rep. 799, 29 S. E. 1028. But see *Church v. Gallic (Ark.)*, 88 S. W. 307 (mere allegation of loss of bill of exceptions by unavoidable accident is not sufficient).

exceptions, equity will relieve.⁸⁶ Again, where a judge of a trial court is disabled by sudden sickness from disposing of a motion for a new trial during the term at which the judgment was rendered, the party filing the motion may, upon showing the facts in his complaint, and that he was guilty of no negligence, and had a meritorious defense or cause of action, obtain relief in equity.⁸⁷ Relief has also been allowed where an attorney who was entrusted with the duty of making a defense, was prevented from reaching court by ice in a river which he had to cross to reach the court-house.⁸⁸ Sickness of a party may be a valid excuse for not appearing.⁸⁹ Such cases, however, must depend upon the peculiar facts of each particular case. If a party has an attorney who can adequately present his defense, and if the presence of the party in court is not essential, sickness is not sufficient ground for relief. If, on the other hand, the party is needed as a witness, or if he

⁸⁶ *Commissioners of Greenville v. Old Dominion Steamship Co.*, 98 N. C. 163, 3 S. E. 505.

⁸⁷ *Leigh v. Armor*, 35 Ark. 123.

⁸⁸ *Ford v. Ford*, 1 Miss. (Walk.) 505, 12 Am. Dec. 587. In *Anthony v. Karbach*, 64 Neb. 509, 97 Am. St. Rep. 662, 90 N. W. 243, dishonesty of attorney in failing to put in an answer was held to amount to such "casualty" as to entitle one to relief. Absence of one of defendant's attorneys, who had cumulative evidence in his possession, is not ground for relief: *Waldo v. Preston*, 135 Pa. St. 181, 19 Atl. 1078.

⁸⁹ *McKean v. Read*, 16 Ky. 395, 12 Am. Dec. 318; *Owen v. Gerson*, 119 Ala. 217, 24 South. 413; *Rice v. R. R. Bank*, 7 Humph. 39. In *Aultman, Miller & Co. v. Higbee*, 32 Tex. Civ. App. 521, 74 S. W. 955, relief was refused, although both defendant and his attorney were prevented from attending court by reason of an epidemic of smallpox. It was held that another attorney should have been secured. See, also, *Hopper v. Davies*, 70 Ill. App. 682. See the following miscellaneous cases: *Beveridge v. Hewitt*, 8 Ill. App. 467 (an attorney failed to defend a case because the court failed to follow its rule requiring a new calendar of cases to be made up each month, and relief was granted); *Crim v. Handley*, 94 U. S. 652, 24 L. ed. 216 (relief denied).

is so sick when served that he cannot even take the first step of hiring an attorney, equity will relieve. The accident may consist in the failure of a state officer to perform a statutory duty, or to follow established rules, thus depriving a party of an opportunity to make a defense.⁹⁰

§ 659. **Mistake.**—It is a familiar doctrine that a mistake of law will not be relieved against save in certain exceptional cases. This principle is generally applied to relief against judgments.⁹¹ Bearing in mind that we are now considering only mistakes as to the proceedings, it is clear that a party should not be allowed to set up his lack of knowledge of law as a reason for not presenting his case. If he were allowed this right, it would be a very simple matter for an unsuccessful litigant to obtain a new trial on the ground that he did not present certain evidence because he thought it would not be admissible. The advice of counsel that there is no defense, or a similar expression from the judge on the bench, will not be sufficient to warrant equity in relieving from a mistaken course taken in reliance on

⁹⁰ “The failure of an officer of a state, whom foreign corporations are compelled by the statutes of the state to appoint their agent to receive service of process, as a condition of doing business in the state, to comply with a statute which requires him to send a summons to the defendant, to which it is directed, immediately upon its receipt, is not such fault or negligence of the defendant corporation as will estop it from securing equitable relief from an unconscionable judgment, which it was prevented from defending itself against by the neglect of the officer. It is an unavoidable accident, which the corporation could neither have foreseen nor anticipated”: *National Surety Co. v. State Bank*, 120 Fed. 593, 56 C. C. A. 657. See *Weed v. Hunt*, 76 Vt. 212, 56 Atl. 980 (clerk of court agreed to notify attorney of any orders filed; he failed to do so and default was taken; relief granted; no statutory duty).

⁹¹ *Dickerson v. Board of Commissioners of Ripley County*, 6 Ind. 128, 63 Am. Dec. 373; *Meem v. Rucker*, 10 Gratt. 506; *McKean v. Read*, 16 Ky. 395, 12 Am. Dec. 318. See 2 Pom. Eq. Jur., §§ 841-851.

such advice.⁹² Mistakes of fact in this connection may be divided into two classes—mistakes by a party or his attorney, and mistakes by some officer of the court. These classes cannot be sharply distinguished, for it often happens that the mistake of the court is due to a mistake of a party. In order that a mistake of a party may be ground for relief, there must be no neglect on his part. A mistake due to one's own failure to investigate is not such as will warrant relief.⁹³ But where there is no negligence, and a party is prevented from presenting his case properly on account of a mistake of fact, equity will interfere and will relieve.⁹⁴ Thus, where an attorney for a plaintiff makes an error in the calculation of interest and takes a judgment for too small an amount, relief may be granted, for the error is merely clerical.⁹⁵ Likewise, where the amount of attorney's fees was agreed to in court under a mistake of

⁹² *Risher v. Roush*, 2 Mo. 95, 22 Am. Dec. 442. But see *Douglass v. Todd*, 96 Cal. 655, 31 Am. St. Rep. 247, 31 Pac. 623. In this case the court says: "Section 1576 of the Civil Code is as follows: 'Mistake may be either of fact or law.' So that it would seem clear that in using the word 'mistake,' in section 473 of the Code of Civil Procedure, without any qualification, it was intended not to restrict the court in granting relief in furtherance of justice to that kind of mistake which involves only facts." "Of course, it does not follow that all mistakes of law are to be relieved against. A sound discretion controlled by an enlightened judgment, keeping in view public interests and the due and orderly administration of the law, is to be exercised in granting that relief which justice between the parties to the cause seems to require." The relief here was by motion, under the section of the Code of Civil Procedure referred to.

⁹³ *Yancey v. Downer*, 15 Ky. 8, 15 Am. Dec. 35; *Green v. Dodge*, 6 Ohio, 80, 25 Am. Dec. 736; *Long v. Eisenbeis*, 18 Wash. 423, 51 Pac. 1061; *Emerson v. Udall*, 13 Vt. 477, 37 Am. Dec. 604; *English v. Aldrich*, 132 Ind. 500, 32 Am. St. Rep. 270, 31 N. E. 456; *Smith v. McLain*, 11 W. Va. 654.

⁹⁴ *Emerson v. Udall*, 13 Vt. 477, 37 Am. Dec. 604.

⁹⁵ *Wilson v. Boughton*, 50 Mo. 17; *Long v. Eisenbeis*, 18 Wash. 423, 51 Pac. 1061.

fact as to the value of the estate,⁹⁶ or where a widow makes an election to take under a will under a similar mistake, equity will relieve.⁹⁷

§ 660. Same—Mistake of Officers of Court.—When the court, or some officer thereof, makes a mistake of fact, not judicial in its nature, equity may relieve. Of course if the mistake is judicial, there is an adequate remedy by appeal. It often happens that owing to a mistake of fact there is an error in the judgment, or that it misdescribes land, or that a judgment is given not warranted by the pleadings. In such cases relief may be awarded.⁹⁸ Thus, where a decree of distribution omits a legatee, or where a record of a deed is inaccurate so that judgment has gone against a party, the jurisdiction is clear.⁹⁹ The mistake may be made by the jury in calculating the amount due.¹⁰⁰ Where a judgment is entered on an agreement to which one defendant's name was forged, although a co-defendant who forged it was the only culpable party, relief will be granted,

⁹⁶ *Lane v. Moss*, 64 Hun, 632, 18 N. Y. Supp. 605.

⁹⁷ *Hill v. Hill*, 62 N. J. L. 442, 41 Atl. 943. As to election, see 1 Pom. Eq. Jur., § 512.

⁹⁸ See 2 Pom. Eq. Jur., § 871, and cases cited; *Smith v. Butler*, 11 Or. 46, 4 Pac. 517; *Quivey v. Butler*, 37 Cal. 465; *Murphy v. Johnson*, 107 Tenn. 552, 64 S. W. 894; *Henry v. Seager*, 80 Ill. App. 172 (mistake of court clerk in not entering dismissal); *Prussian Nat. Ins. Co. v. Chichocky*, 94 Ill. App. 168 (mistake of judge in dismissing case called out of order). In *State Bank v. Young*, 2 Ind. 171, 52 Am. Dec. 501, it is held that a court of chancery cannot correct a record on account of the clerk of court making a mistake in entering judgment.

⁹⁹ *Hall v. Hall*, 98 Wis. 193, 73 N. W. 1000; *Clark v. Sayers*, 48 W. Va. 33, 35 S. E. 882.

¹⁰⁰ *Rust v. Ware*, 6 Gratt. 50, 52 Am. Dec. 100; *Cohen v. Dubose*, 1 Harp. Eq. 102, 14 Am. Dec. 709. In *Hamburg-Bremen Fire Ins. Co. v. Pelzer Mfg. Co.*, 76 Fed. 479, 22 C. C. A. 283, the foreman of the jury, by mistake, had omitted to read one of the items allowed by the jury, and relief was given.

for the judgment is entered under a mistake of fact.¹⁰¹ In order to warrant relief, there must be clear and conclusive evidence of mistake.¹⁰²

§ 661. **Same—Newly Discovered Evidence.**—It frequently happens that a party, through no fault of his own, is ignorant of facts constituting a defense to the action. The rule in such cases is that equity will relieve if the party could not, by the exercise of reasonable diligence, have obtained the evidence.¹⁰³ But if there has been an ample opportunity to discover the evidence, and it is not then forthcoming, relief will be denied.¹⁰⁴

§ 662. **Surprise.**—Surprise is also frequently stated to be ground for equitable relief. As in the case of all the other matters which constitute grounds for relief against judgments, there must be no negligence. The surprise which is ground for relief must consist in something in the proceedings which the party did not expect and which he had no reasonable ground to expect. The doctrine will be best illustrated by examining the facts of a few cases. Thus, in a federal case, foreigners were sued and were represented by an attorney. At the trial the complaint was amended, and the attorney was unable to meet the amendments. It was held a proper case for equitable interference.¹⁰⁵ Again, in another case, a verdict was obtained against the plain-

¹⁰¹ *Lindsley v. Sparks*, 20 Tex. Civ. App. 56, 48 S. W. 204.

¹⁰² *Katz v. Moore*, 13 Md. 566.

¹⁰³ *Dey v. Martin*, 78 Va. 1; *Roach v. Duckworth*, 61 How. Pr. 128; *Chicago & E. I. R. Co. v. Hay*, 119 Ill. 493, 10 N. E. 29; in *Hubbard v. State* (Neb.), 100 N. W. 153, it was held that this rule does not apply to criminal cases.

¹⁰⁴ *Peters v. League*, 13 Md. 58, 71 Am. Dec. 622; *Hall v. Griffin*, 119 Ala. 214, 24 South. 27; *Hayes v. United States Phonograph Co.*, 65 N. J. Eq. 5, 55 Atl. 84.

¹⁰⁵ *Bell v. Cunningham*, 1 Sumn. 89, Fed. Cas. No. 1246.

tiff by the production of a receipt signed by his agent, of which he was not notified and probably had no knowledge, and which he had no reason to expect would be produced. It was shown by evidence obtained too late to be available at law that the receipt was in reality given for other money. This was held to be ground for relief.¹⁰⁶ An injunction has issued against the enforcement of a judgment of a justice of the peace who agreed to notify the complainant of the time set for trial, but failed to do so.¹⁰⁷ The mere failure of an attorney, who has been employed, to appear does not constitute surprise, especially when the party has not supplied him with the facts necessary for a defense.¹⁰⁸ Ordinarily, when unexpected testimony is introduced it is the duty of the surprised party to ask for a continuance; and it would seem, in the absence of such a motion, that equitable relief should be denied.¹⁰⁹

§ 663. **Want of Jurisdiction—Failure to Serve Summons or Process.**—In many cases courts of equity will interfere to prevent injustice when a court of law has acted without jurisdiction. This interference is based on the inequitable results which follow, and frequently is wholly independent of any wrong on the part of the prevailing party. One of the commonest illustrations is found in cases where no jurisdiction has been obtained because there has been no service of summons or process. The rule seems to be that where the failure to serve a party results in his inability to answer, relief will be granted.¹¹⁰ On the point as to whether a meritorious

106 *Barnes v. Milne*, 1 Rich. Eq. Cas. 459, 24 Am. Dec. 422.

107 *Levy v. Metropolis Mfg. Co.*, 73 Conn. 559, 48 Atl. 429.

108 *Kearney v. Smith*, 11 Tenn. 127, 24 Am. Dec. 550; *Callaway v. Alexander*, 8 Leigh, 114, 31 Am. Dec. 640.

109 *Crim v. Handley*, 94 U. S. 652, 24 L. ed. 216 (a case of accident).

110 *Mutual Reserve Fund Life Assn. v. Phelps*, 103 Fed. 515;

defense must be shown, the courts are divided. The question is discussed more at length in a subsequent paragraph.

The defect in service may not be apparent on the record, or again, the record itself may show the want of jurisdiction. In the former case the question arises as to whether a return can be attacked. It was formerly held by common-law courts that their judgments purported absolute verity. If the jurisdiction of the court depended upon the false return of an officer to the service of process, the party injured could maintain an action against the officer, but he could not be relieved from the judgment. The modern equity cases have greatly ameliorated this harsh doctrine, and it can be safely stated that the general rule, by the weight of authority, is that a return may be attacked in an action to set aside the judgment.¹¹¹ The justice of this rule requires no argument. The remedy at law against an officer is at best of a very doubtful character, and in

Raisin Fertilizer Co. v. McKenna, 114 Ala. 274, 21 South. 816; *People v. Temple*, 103 Cal. 447, 37 Pac. 414; *Robberson v. Crow*, 3 Ind. Ter. 174, 53 S. W. 534; *Keely v. East Side Imp. Co.*, 16 Colo. App. 365, 65 Pac. 456; *Leonard v. Capital Ins. Co.*, 101 Iowa, 482, 70 N. W. 629; *Smoot v. Judd*, 161 Mo. 673, 84 Am. St. Rep. 738, 61 S. W. 854; *Bell v. Williams*, 1 Head, 229; *Kochman v. O'Neill*, 202 Ill. 110, 66 N. E. 1047; *Rice v. Tobias*, 89 Ala. 214, 7 South. 765.

¹¹¹ *Smith v. Morrill*, 12 Colo. App. 233, 55 Pac. 824; *Huntington v. Crouter*, 33 Or. 408, 72 Am. St. Rep. 726, 54 Pac. 208; *Ryan v. Boyd*, 33 Ark. 778; *McNeill v. Edie*, 24 Kan. 108; *Walker v. Gilbert*, Freem. Ch. (Miss.) 85; *Jones v. Commercial Bank of Columbia*, 6 Miss. 43, 35 Am. Dec. 419; *Duncan v. Gerdine*, 59 Miss. 550; *Dowell v. Goodwin*, 22 R. I. 287, 84 Am. St. Rep. 842, 47 Atl. 693, 51 L. R. A. 873; *Ridgeway v. Bank of Tennessee*, 11 Humph. 523; *Raisin Fertilizer Co. v. McKenna*, 114 Ala. 274, 21 South. 816; *Ruff v. Elkin*, 40 S. C. 69, 18 S. E. 220; *Owens v. Ranstead*, 22 Ill. 161; *Crafts v. Dexter*, 8 Ala. 767, 42 Am. Dec. 666. It has been held that the evidence alone of the party himself is not sufficient to overturn the sheriff's return: *Allen v. Hickey*, 53 Ill. App. 437. To the effect that the return is conclusive, see *Smoot v. Judd* (Mo.), 83 S. W. 481.

many cases damages, if recovered, are a wholly inadequate remedy; for example, where the action is for the recovery of land. Some courts, however, have laid down the rule that an officer's return cannot be attacked unless it is willfully false and has been procured by the plaintiff at law.¹¹² The effect of this is to make the basis of the equity action fraud by the plaintiff at law. The injured party must, if no fraud be shown, depend upon his remedy against the officer. It is everywhere held, however, that the officer's return is *prima facie* evidence of regularity. The court in a default judgment must find that there has been due service. This finding will be presumed to be correct. Therefore, in order to impeach it, clear and satisfactory evidence must be produced.¹¹³ Often a summons is served by a private individual. In such cases the grounds upon which the officer's return is protected in some jurisdictions do not exist, and accordingly it is believed that an attack on the judgment will generally be allowed.¹¹⁴

§ 664. Same—Continued.—Where the judgment is attacked because of failure to serve process the usual prin-

¹¹² Taylor v. Lewis, 25 Ky. 400, 19 Am. Dec. 135; Thomas v. Ireland, 88 Ky. 581, 21 Am. St. Rep. 356, 11 S. W. 653; Preston v. Kindrick, 94 Va. 760, 64 Am. St. Rep. 777, 27 S. E. 588; McClung v. McWhorter, 47 W. Va. 150, 81 Am. St. Rep. 785, 34 S. E. 740; Cully v. Shirk, 131 Ind. 76, 31 Am. St. Rep. 414, 30 N. E. 882, distinguishing Dobbins v. McNamara, 113 Ind. 54, 3 Am. St. Rep. 626, 14 N. E. 887. See Walker v. Robbins, 55 U. S. (14 How.) 584, 14 L. ed. 552. In Frankel v. Garrard, 160 Ind. 209, 66 N. E. 687, these facts existed and relief was granted. See, also, Anthony v. Masters, 28 Ind. App. 239, 62 N. E. 505.

¹¹³ Jamison v. Weaver, 84 Iowa, 611, 51 N. W. 65; Huntington v. Crouter, 33 Or. 408, 72 Am. St. Rep. 726, 54 Pac. 208; Jones v. Commercial Bank of Columbus, 6 Miss. (5 How.) 43, 35 Am. Dec. 419; Northwestern & Pac. Hypotheek Bank v. Ridpath, 29 Wash. 878, 70 Pac. 139.

¹¹⁴ Lapham v. Campbell, 61 Cal. 296.

ciple applies, that relief will not be granted where there is an adequate remedy at law.¹¹⁵ In most cases, as will be seen upon an examination of those heretofore cited, it is held that there is no such adequate remedy. In some states, however, it is held that a remedy by motion is sufficient and will bar all claim to equitable relief.¹¹⁶ Much will depend upon the form of the statutes in the various jurisdictions.

Where a return is defective on its face, the judgment is clearly void. Some courts divide the cases into two classes, void judgments and voidable judgments—the former being those in which the defect is apparent and the latter those in which it is not. The general rule seems to be that equity will interfere with a judgment even where it is void on its face provided the legal remedy has been lost.¹¹⁷ This rule is not universal, however, for some courts, on the analogy of the familiar rule concerning cloud on title, hold that such a judgment, being a nullity, can confer no rights, and that therefore there is always an adequate remedy at law.¹¹⁸

115 *Walker v. Robbins*, 55 U. S. (14 How.) 584, 14 L. ed. 552; *Hockaday v. Jones*, 8 Okla. 156, 56 Pac. 1054; *St. Louis & S. F. Ry. Co. v. Lowder*, 138 Mo. 533, 60 Am. St. Rep. 565, 39 S. W. 799; *Railway Co. v. Ryan*, 31 W. Va. 364, 13 Am. St. Rep. 865, 6 S. E. 924; *Graham v. Roberts*, 1 Head, 56; *Armstrong v. Cheshire*, 17 N. C. 234, 34 Am. Dec. 273; *Crocker v. Allen*, 34 S. C. 452, 27 Am. St. Rep. 831, 13 S. E. 650; *Dearing v. Bank of Charleston*, 5 Ga. 497, 48 Am. Dec. 300.

116 See cases in preceding note.

117 *Nicholson v. Stephens*, 47 Ind. 185; *San Juan etc. Co. v. Finch*, 6 Colo. 214. In this case the court said: "That a judgment rendered against a party not before the court is invalid, is a jurisdictional principle of elementary familiarity, and that a court of chancery may interpose to enjoin the execution of a judgment rendered against a party without service of process upon him, by reason whereof he does not appear or make defense to the action, is well settled by weight of authorities."

118 *Russell v. Interstate Lumber Co.*, 112 Mo. 40, 20 S. W. 26; *Henman v. Westheimer* (Mo. App.), 85 S. W. 101 (*dictum*). Compare *Hoover v. Bartlett*, 42 Or. 145, 70 Pac. 378.

A mere defect in the service of summons is not sufficient to warrant the interference of equity if the summons gives notice to the defendant so that he can prepare his defense.¹¹⁹ Where, however, the defect is such that it deprives the defendant of notice, relief will be granted. Thus, equity has interfered where, a statute requiring a copy of the declaration to be left at the dwelling-house of the defendant if he be absent, the copy is left upon the premises over a hundred feet from the house.¹²⁰ Likewise, relief is proper when a summons is left at the residence of a defendant who is confined in an insane asylum, and neither he nor anyone for him has notice of the suit.¹²¹ Where, in an action against a corporation, service of process was accepted by the president and the secretary while acting as agents for the plaintiff, equitable relief was granted.¹²² A summons in an action against a corporation must be served upon the proper officer. Accordingly, a judgment rendered on default when service had been made upon a local agent of an insurance company, who had no authority for that purpose, was canceled.¹²³ Where service is obtained by publication, by means of a false affidavit, relief may sometimes be granted; but where the acts of the defendant have induced the belief that he is a non-resident, relief will be refused.¹²⁴

§ 665. Same—Unauthorized Appearance of Attorney.— Closely akin to judgments obtained by default are judgments obtained on the unauthorized appearance of an

119 Chas. C. Taft Co. v. Bounani, 110 Iowa, 739, 81 N. W. 469; Griffith v. Milwaukee Harvester Co., 92 Iowa, 634, 54 Am. St. Rep. 573, 61 N. W. 243.

120 Kibbe v. Benson, 84 U. S. (17 Wall.) 624, 21 L. ed. 741.

121 Blakeslee v. Murphy, 44 Conn. 188.

122 Fox v. Robbins (Tex. Civ. App.), 62 S. W. 815.

123 State Ins. Co. v. Waterhouse, 78 Iowa, 674, 43 N. W. 611.

124 McQuiddy v. Ware, 87 U. S. (20 Wall.) 14, 22 L. ed. 311.

attorney. An attorney of a court of record is an officer of the court, and when he appears in a case it is presumed that he acts with authority. The earlier cases, following somewhat the same line of argument as that used by the courts which hold that an officer's return cannot be attacked, held that ordinarily the judgment could not be questioned because of the unauthorized appearance of an attorney, unless there was collusion.¹²⁵ The remedy was against the attorney only. If he were insolvent the remedy against him might be inadequate, and in such event equity would probably take jurisdiction. The modern view, however, is that equity will relieve against a judgment obtained without service of process and upon the unauthorized appearance of an attorney.¹²⁶ As in the case of the sheriff described in the two preceding sections, the remedy against an attorney is generally unsatisfactory. Hence it is now held to be immaterial whether the attorney is solvent or not.¹²⁷ A party is entitled to his day in court, and if he is deprived of that, whether by collusion or by the wrongful act of the attorney alone, he should be relieved.¹²⁸ The constitutions of the various

¹²⁵ *Bunton v. Lyford*, 37 N. H. 512, 75 Am. Dec. 144. See cases cited in note to this case in 75 Am. Dec. There is also a collection of cases in the note in 54 Am. St. Rep. 247.

¹²⁶ *Shelton v. Tiffin*, 47 U. S. (6 How.) 163, 12 L. ed. 387; *Brown v. Walker*, 84 Fed. 532; *McEachern v. Brackett*, 8 Wash. 652, 40 Am. St. Rep. 922; *Cassidy v. Automatic Time-Stamp Co.*, 185 Ill. 431, 56 N. E. 1116; *Nelson v. Rockwell*, 14 Ill. 375; *Du Bois v. Clark*, 12 Colo. App. 220, 55 Pac. 750; *Handley v. Jackson*, 31 Or. 552, 65 Am. St. Rep. 839, 50 Pac. 915; *Harshey v. Blackman*, 20 Iowa, 161, 89 Am. Dec. 520; *Corbitt v. Timmerman*, 95 Mich. 581, 35 Am. St. Rep. 586, 55 N. W. 437; *Goldie Const. Co. v. Rich Const. Co.* (Mo. App.), 86 S. W. 587. See, also, *Robb v. Vos*, 155 U. S. 13, 15 Sup. Ct. 4, 39 L. ed. 52.

¹²⁷ *Handley v. Jackson*, 31 Or. 552, 65 Am. St. Rep. 839, 50 Pac. 915.

¹²⁸ See cases cited above. It is incumbent upon the party claiming that an appearance is unauthorized to prove it: *Stubbs v. Leavitt*, 30 Ala. 352.

states provide that no person shall be deprived of property without due process of law. To take one's property without giving him an opportunity to be heard is a violation of this provision. Hence it would seem that the duty of a court of equity is clear. An attorney, however, is presumed to act with authority, and therefore the burden of showing the lack is upon the complainant attacking the judgment.

§ 666. *Same—Miscellaneous.*—Numerous other cases may arise in which the court may be without jurisdiction. The amount involved may be too large for the court to take jurisdiction of the suit, and again it may be too small.¹²⁹ The judge may be disqualified from acting because of interest in the result.¹³⁰ The judgment may be entered before the time to answer has expired.¹³¹ The nature of the suit may be such that the court has no jurisdiction.¹³² For instance, in many states a justice's court has no equity jurisdiction, and if it assumes such jurisdiction, its decree may be enjoined. Again, the court may have no jurisdiction of the person of the defendant because he lives in another county.¹³³ In these and similar cases,¹³⁴ courts of equity have granted relief. The judgment must be void, however, and not erroneous only, for in such a case

¹²⁹ *Tucker v. Williams* (Tex. Civ. App.), 56 S. W. 585.

¹³⁰ *Harrison v. Lokey*, 26 Tex. Civ. App. 404, 63 S. W. 1030; *Smith v. Pearce*, 6 Baxt. 72 (related to party).

¹³¹ *Rumfield v. Neal* (Tex. Civ. App.), 46 S. W. 262.

¹³² *Smith v. Carroll*, 28 Tex. Civ. App. 330, 66 S. W. 863.

¹³³ *Jennings v. Shiner* (Tex. Civ. App.), 43 S. W. 276.

¹³⁴ *Elder v. Richmond G. & S. M. Co.*, 19 U. S. App. 118, 58 Fed. 536, 7 C. C. A. 354; *Hicks v. Brinson*, 100 Ga. 595, 28 S. E. 380, *Woffard v. Booker*, 10 Tex. Civ. App. 171, 30 S. W. 67; *Combs v. Sewell*, 22 Ky. Law Rep. 1026, 59 S. W. 526; *Isaac v. Swift*, 10 Cal. 71, 70 Am. Dec. 698; *Olson v. Nunnally*, 47 Kan. 391, 27 Am. St. Rep. 296, 28 Pac. 149; *Iowa Sav. & L. Assn. v. Chase*, 118 Iowa, 51, 91 N. W. 807; *McConkie v. Landt* (Iowa), 101 N. W. 1121.

there is an adequate remedy at law.¹³⁵ Even where the judgment is absolutely void there may be and often is an adequate remedy by appeal or motion. In such cases, relief will be refused.¹³⁶

§ 667. **Meritorious Defense Must be Shown.**—It is not the province of equity to correct mere technical wrongs. A party seeking its aid must show some substantial injury. It frequently happens that a judgment is obtained by fraud, accident, or surprise, although the same result would be reached if an adversary trial had been had. In such a case the defendant at law is equitably bound to pay the amount of the judgment, and equity will not interfere to relieve him. The fraud, accident, or surprise is, in such a case, a mere technical wrong. Hence it is laid down that equity will not relieve from judgments in general unless a meritorious defense is shown, so that on a re-examination and retrial of the case the result would be different.¹³⁷ This rule is uni-

¹³⁵ *McIndoe v. Hazelton*, 19 Wis. 567, 88 Am. Dec. 701; *Earl v. Matheney*, 60 Ind. 202; *John V. Farwell Co. v. Hilbert*, 91 Wis. 437, 65 N. W. 172, 30 L. R. A. 235.

¹³⁶ *Fuller v. Townsley-Myrick Dry Goods Co.*, 58 Ark. 314, 24 S. W. 635; *Sheldon v. Motter* (Kan.), 53 Pac. 89; *Geers v. Scott* (Tex. Civ. App.), 33 S. W. 587.

¹³⁷ 4 Pom. Eq. Jur., § 1364, note; *White v. Crow*, 110 U. S. 183, 4 Sup. Ct. 71, 28 L. ed. 113; *Massachusetts Ben. Life Assn. v. Lohmiller*, 46 U. S. App. 103, 74 Fed. 23, 20 C. C. A. 274; *Saunders v. Albritton*, 37 Ala. 716; *Little Rock & H. S. W. R. Co. v. Newman* (Ark.), 84 S. W. 727; *Storrs v. Pensacola & A. R. Co.*, 29 Fla. 617, 11 South. 226; *Brown v. Brown*, 99 Ga. 312, 25 S. E. 649; *Holmes v. Stateler*, 57 Ill. 209; *Lemon v. Sweeny*, 6 Ill. App. 507; *Way v. Lamb*, 15 Iowa, 79; *True v. Mendenhall*, 67 Kan. 497, 73 Pac. 67; *Finn v. Adams* (Mich.), 101 N. W. 532; *Tootle v. Ellis*, 63 Kan. 422, 88 Am. St. Rep. 246, 65 Pac. 675; *Roots v. Cohen* (Miss.), 12 South. 593; *Sauer v. City of Kansas*, 69 Mo. 46; *Petalka v. Fitle*, 33 Neb. 756, 51 N. W. 131; *Tomkins v. Tomkins*, 11 N. J. Eq. 512; *Stout v. Slocum*, 52 N. J. Eq. 88, 28 Atl. 7; *Gifford v. Morrison*, 37 Ohio St. 502, 41 Am. Rep. 537; *Hockaday v. Jones*, 8 Okla. 156, 56 Pac. 1054; *George v. Nowlan*, 38 Or. 537, 64 Pac. 1; *Rumfield v. Neal* (Tex. Civ.

versal as to judgments obtained merely by fraud, accident, or surprise. In cases where the ground of attack on the judgment is want of jurisdiction, as where there is no service of summons, there is a conflict of authority; but the prevailing view is that even there a good defense on the merits must be shown.¹³⁸ The cases

App.), 46 S. W. 262; *Rotan v. Springer*, 52 Ark. 80, 12 S. W. 156; *Bradley v. Richardson*, 23 Vt. 720, Fed. Cas. No. 1786; *Pilger v. Torrence*, 42 Neb. 903, 61 N. W. 99; *Bloss v. Hull*, 27 W. Va. 503; *Foust v. Warren* (Tex. Civ. App.), 72 S. W. 404; *Chambers v. Gallup*, 30 Tex. Civ. App. 424, 70 S. W. 1009; *Ford v. Hill*, 92 Wis. 188, 53 Am. St. Rep. 902, 66 N. W. 115; *Vaughan v. Hewitt*, 17 S. C. 442. In Illinois it is provided by statute that only so much of any judgment at law shall be enjoined as the complainant shall show himself equitably not bound to pay. See *Ross v. Cox*, 69 Ill. App. 430.

¹³⁸ *Raisin Fertilizer Co. v. McKenna*, 114 Ala. 274, 21 South. 816; *Jones v. Commercial Bank*, 6 Miss. (5 How.) 43, 35 Am. Dec. 419; *Walker v. Gilbert*, Freem. Ch. (Miss.) 85; *Handley v. Jackson*, 31 Or. 552, 65 Am. St. Rep. 839, 50 Pac. 915; *Fowler v. Lee*, 10 Gill & J. 358, 32 Am. Dec. 172; *Rice v. Tobias*, 83 Ala. 348, 3 South. 670; *Harnish v. Bramer*, 71 Cal. 155, 11 Pac. 888; *Colson v. Leitch*, 110 Ill. 504; *Heir v. Kaufman*, 134 Ill. 215, 25 N. E. 517; *Combs v. Hamlin Wizard Oil Co.*, 58 Ill. App. 123; *Garden City Wire & Spring Co. v. Kause*, 67 Ill. App. 108; *Off v. Title G. etc. Co.*, 87 Ill. App. 472 (must show good defense or that judgment is excessive); *Burch v. West*, 134 Ill. 258, 25 N. E. 658; *Williams v. Hitzie*, 83 Ind. 303; *Hollinger v. Reeme*, 138 Ind. 363, 46 Am. St. Rep. 402, 36 N. E. 1114, 24 L. R. A. 46; *Robberson v. Crow*, 3 Ind. Ter. 174, 53 S. W. 534; *Kendall v. Smith*, 67 Kan. 90, 72 Pac. 543; *Newman v. Taylor*, 69 Miss. 670, 13 South. 831; *Wilson v. Shipman*, 34 Neb. 573, 33 Am. St. Rep. 660, 52 N. W. 576; *Janes v. Howell*, 37 Neb. 320, 40 Am. St. Rep. 494, 55 N. W. 965; *Fickes v. Vick*, 50 Neb. 401, 69 N. W. 951; *Bankers' Life Ins. Co. v. Robbins*, 53 Neb. 44, 73 N. W. 269, 46 Cent. L. J. 109; *Lawton v. Nichols*, 12 Okla. 550, 73 Pac. 262; *Schleiche v. Markward*, 61 Tex. 99; *Masterson v. Ashcom*, 54 Tex. 324; *Stokes v. Knarr*, 11 Wis. 389; *State v. Hill*, 50 Ark. 458, 8 S. W. 401; *Mass. Benefit Life Assn. v. Lohmiller* 46 U. S. App. 103, 74 Fed. 23, 20 C. C. A. 274. In *Gregory v. Ford*, 14 Cal. 138, 73 Am. Dec. 639, it was held that where a party does not deny an indebtedness for which a judgment is rendered, it would be as equitable to turn him over to his action against the sheriff for a false return as to relieve him from the judgment and turn the other party for redress to an action against the sheriff.

contra rest upon the theory that everyone is entitled to a day in court.¹³⁹ The arguments in their favor are certainly most persuasive. The constitution of the United States and the constitutions of the various states provide that no person shall be deprived of property without due process of law. When a party is not served with process he is not in a position to defend his rights if he have any. It is a dangerous doctrine that a void judgment can be sustained. It is a boon to the unscrupulous. A plaintiff may obtain a judgment at will, and unless his opponent can convince the court that his defense is meritorious, relief will be refused.

¹³⁹ *Ridgeway v. Bank of Tennessee*, 11 Humph. 523; *Kelly v. East Side Imp. Co.*, 16 Colo. App. 365, 65 Pac. 456; *Crippen v. X. Y. Irr. Ditch Co.* (Colo.), 76 Pac. 794; *Bell v. Williams*, 1 Head, 229; *Blakeslee v. Murphy*, 44 Conn. 188; *Ryan v. Boyd*, 33 Ark. 778; *Schiele v. Thede* (Iowa), 102 N. W. 133; *Cooley v. Barker*, 122 Iowa, 440, 101 Am. St. Rep. 276, 98 N. W. 289. In *Harrison v. Lokey*, 26 Tex. Civ. App. 404, 63 S. W. 1030, a judgment was void, because the justice of the peace who rendered it had been an attorney in the case. It was held that an injunction would issue regardless of merits. In Colorado the courts have endeavored to establish two novel rules. In *Great West. Min. Co. v. Woodmas of Alston Min. Co.*, 12 Colo. 46, 13 Am. St. Rep. 204, 20 Pac. 771, a distinction was attempted between a sale or deed and the judgment itself. It was said that before a man's property is sold or deeded away he should have an opportunity to pay. Therefore, where the court has had no jurisdiction, an injunction may issue against a sale, without regard to merits. In *Wilson v. Hawthorne*, 14 Colo. 530, 20 Am. St. Rep. 290, 24 Pac. 548, it was held that a good defense should be alleged in all cases as an evidence of good faith. Where the judgment is void, however, the good defense need not be proved. This seems more in keeping with the fictions of the old common law. It has been held that a good defense need not be shown if the party offers to pay the judgment: *Hanswirth v. Sullivan*, 6 Mont. 203, 9 Pac. 798. The rule whereby a party seeking affirmative relief against void judgments is required to disclose a meritorious defense does not apply if plaintiff is himself seeking affirmatively to enforce the judgment: *Campbell Printing Press & Mfg. Co. v. Marder, Luse & Co.*, 50 Neb. 283, 61 Am. St. Rep. 573, 69 N. W. 774.

§ 668. Jurisdiction to Grant New Trials at Law.—“The jurisdiction of the English chancery to enjoin judgments at law, not by reason of any equitable right involved in the controversy itself, but on account of wrongful acts or omissions accompanying the trial at law, originated at a time when the law courts had little or no power to grant new trials for such causes. To prevent a failure of justice, a distinct head of equitable jurisdiction was admitted, that of virtually granting new trials—of entertaining suits for a new trial—when a judgment at law had been thus obtained by fraud, mistake, or accident; and the injunction against further proceedings on the judgment was a mere incident of the broader relief which set aside the judgment and granted a rehearing of the controversy in the court of chancery. The original occasion for this special jurisdiction has disappeared. In England, and in most if not all of the American states, either through statutes or through judicial action, the courts of law have acquired, and constantly exercise, full powers to grant new trials, whenever from the wrongful acts or omissions of the successful party, or from accident or mistake of the other party, or from error or misconduct by the judge or the jury, there has been a failure of justice. In other words, the powers of the law courts to set aside verdicts or judgments are so ample as to meet all the requirements of equity and justice, and the special equitable jurisdiction with respect to this matter has become obsolete in the very large majority of the states, if not in all of them. The result is, in my opinion, that practically the only jurisdiction now exercised by courts of equity to enjoin judgments at law, where no equitable right or interest is involved in the controversy, on account of wrongful acts or omissions connected with the trial, is a part of and incidental to the broad jurisdiction which

equity possesses to set aside and cancel judgments, deeds, contracts, and the like which have been obtained through fraud, undue influence, or mistake. A court of equity, in general, no longer assumes control over a legal judgment for the purpose of a new trial or any similar relief; it will, in a proper case of fraud or mistake, set aside such judgment; and wherever it will grant this final remedy, it will, as a preliminary and incidental relief, restrain by injunction all proceedings upon the judgment."¹⁴⁰

§ 669. *Effect of Statutory Remedies.*—In many states the reformed procedure has greatly encroached upon the jurisdiction of equity, and a remedy by motion for judgments obtained by fraud or without jurisdiction has been provided. "As a result of these innovations upon the ancient procedure, it has seldom been found necessary in the code states for a suitor to enjoin the enforcement of a judgment at law by means of an independent action for equitable relief. At no time would a court of equity interfere if a complete remedy could be obtained at law, and this well-established rule has been frequently applied to cases where the relief sought in equity by an independent action was available to the suitor by motion made under the statute."¹⁴¹ It is an elementary principle of equity that chancery courts do not lose jurisdiction already acquired merely because courts of law obtain like powers. It would

¹⁴⁰ 4 Pom. Eq. Jur., § 1365. Cited in *Kirkhuff v. Kerr*, 57 N. J. Eq. 623, 42 Atl. 734.

¹⁴¹ *Kitzman v. Minnesota Thresher Mfg. Co.*, 10 N. D. 26, 84 N. W. 585. Where the remedy by motion, appeal, certiorari, etc., is adequate, relief will be denied: *Cocke v. Copenhaver*, 126 Fed. 145; *Village of Dolton v. Dolton*, 201 Ill. 465, 66 N. E. 323; *Stewart v. Snow* (Ind. Ter.), 82 S. W. 696; *Searcy v. Clay County*, 176 Mo. 493, 75 S. W. 657; *Kyle v. Richardson* (Tex. Civ. App.), 71 S. W. 399; *Hickok v. Caton*, 53 W. Va. 46, 44 S. E. 178; *Baer v. Higson*, 26 Utah, 78, 72 Pac. 180.

seem that such a principle should apply in cases of this sort, but the courts have seemingly made an exception. The equity courts are not generally completely ousted of their jurisdiction by the legal remedy. Often the remedy by motion proves inadequate, owing either to lapse of time or some other circumstance which renders it impossible to take advantage of it. In such cases equity will relieve.¹⁴² When the remedy by motion or otherwise is provided, a party must either take advantage of it or show some good reason why he has not.¹⁴³ If the remedy at law is still open, it must be pursued. It would seem that a remedy by motion is never so adequate a remedy as a bill in chancery. It is informal and generally rests upon affidavits. This certainly, as a matter of fact, is not so satisfactory as an equity

¹⁴² *Ex-Mission L. & W. Co. v. Flash*, 97 Cal. 610, 32 Pac. 600; *Smithson v. Smithson*, 37 Neb. 535, 40 Am. St. Rep. 504, 56 N. W. 300; *Caruthers v. Hartsfield*, 3 Yerg. 366, 24 Am. Dec. 580; *Pelzer Mfg. Co. v. Hamburg-Bremen Fire Ins. Co.*, 71 Fed. 826.

¹⁴³ *Luco v. Brown*, 73 Cal. 3, 2 Am. St. Rep. 772, 14 Pac. 366; *Hollenbeak v. McCoy*, 127 Cal. 21, 59 Pac. 201; *Snider v. Rinehart*, 20 Colo. 448, 39 Pac. 408; *Hurlbut v. Thomas*, 55 Conn. 181, 3 Am. St. Rep. 43, 10 Atl. 556; *Ross v. Banta*, 140 Ind. 120, 34 N. E. 865, 39 N. E. 732; *Edwards v. Handley*, 3 Ky. (Hard.) 602, 3 Am. Dec. 745; *Yancey v. Downer*, 15 Ky. (5 Litt.) 8, 15 Am. Dec. 35; *Hulett v. Hamilton*, 60 Minn. 21, 61 N. W. 672; *Woodward v. Pike*, 43 Neb. 777, 62 N. W. 230; *Mayer v. Nelson*, 54 Neb. 434, 74 N. W. 841; *Wolcott v. Jackson*, 52 N. J. Eq. 387, 28 Atl. 1045; *Ludwig v. Lazarus*, 41 N. Y. Supp. 773, 10 App. Div. 62; *Chambers v. Penland*, 78 N. C. 53; *Kitzman v. Minnesota Thresher Mfg. Co.*, 10 N. D. 26, 84 N. W. 585; *Smith v. Kammerer*, 152 Pa. St. 98, 25 Atl. 165; *Crocker v. Allen*, 34 S. C. 452, 27 Am. St. Rep. 831, 13 S. E. 650; *Hamblin v. Knight*, 81 Tex. 351, 26 Am. St. Rep. 818, 16 S. W. 1082; *Weaver v. Vanderwanter*, 84 Tex. 691, 19 S. W. 889; *Sherman Steam-Laundry Co. v. Carter*, 24 Tex. Civ. App. 533, 60 S. W. 328; *Brown v. Chapman*, 90 Va. 174, 17 S. E. 855; *Hendrickson v. Hinchley*, 58 U. S. (17 How.) 443, 15 L. ed. 123; *Travelers' Pro. Assn. v. Gilbert*, 111 Fed. 269, 49 C. C. A. 309, 55 L. R. A. 538; *Furnald v. Glenn*, 56 Fed. 372. In *Chezum v. Claypool*, 22 Wash. 498, 79 Am. St. Rep. 955, 61 Pac. 157, the court held the statutory remedy to be so complete and adequate as to be exclusive.

suit where the matter can be thoroughly investigated. Where a motion for a new trial has been made at law and has been denied, equity will not, on the same facts, interfere.¹⁴⁴

§ 670. Injunctions Against Proceedings in Foreign Jurisdictions.—As a court of equity acts *in personam*, it “has the power to and will restrain its own citizens from prosecuting suits in the courts of other states and foreign jurisdictions, whenever the facts of the case make such restraint necessary to enable the court to do justice, and prevent one citizen from obtaining an inequitable advantage over other citizens.”¹⁴⁵ Accordingly, proceedings in another state may be enjoined when the claim is entirely invalid and it would work an injustice to compel the defendant at law to resort to the courts of the foreign jurisdiction.¹⁴⁶ It would seem that the true basis of the jurisdiction in such a case is that the foreign court cannot do as complete justice as the domestic court. Thus, in divorce suits, where the plaintiff has obtained a mere colorable residence in another state for the purposes of the action, the defendant may obtain an injunction in the state of resi-

¹⁴⁴ *Codde v. Mahiat*, 109 Mich. 186, 66 N. W. 1093; *Telford v. Brinckerhoff*, 163 Ill. 439, 45 N. E. 156; *Hendrickson v. Bradley*, 85 Fed. 508, 29 C. C. A. 303; *Folsom v. Ballard*, 70 Fed. 12, 36 U. S. App. 75, 16 C. C. A. 593; *Hoffmann v. Burris*, 210 Ill. 587, 71 N. E. 584.

¹⁴⁵ *Hawkins v. Ireland*, 64 Minn. 339, 58 Am. St. Rep. 534, 67 N. W. 73, per Start, C. J. This subject is discussed in a note in 59 Am. St. Rep. 879 ff. In California, such an injunction can issue only to prevent a multiplicity of suits: *Spreckels v. Hawaiian Com. & Sugar Co.*, 117 Cal. 377, 49 Pac. 353.

¹⁴⁶ The leading case in support of this proposition is *Lord Portarlington v. Soulby*, 3 Mylne & K. 104 (defense, gambling debt). See, also, *Miller v. Gittings*, 85 Md. 601, 60 Am. St. Rep. 352, 37 Atl. 372 (“equity will enjoin suits in other states where there is fraud, oppression, vexation, injustice, or unconscientious advantage”).

gence, the hardship of making a long journey to present her defense appealing to the court.¹⁴⁷ Moreover, in many actions the law of the domicile is controlling. The necessity and difficulty of proving such law in a distant state sometimes inclines a court to settle the case itself.¹⁴⁸ Where, however, the foreign court can do as complete justice to the parties as the domestic court, no injunction will issue.¹⁴⁹ Courts will not allow citizens of their own state to evade domestic laws by resorting to foreign tribunals; as, by suing in a jurisdiction where the exemption laws are more liberal, or by attempting to reach foreign assets after recognizing a general assignment for the benefit of creditors.¹⁵⁰

¹⁴⁷ *Huettinger v. Huettinger* (N. J. Eq.), 43 Atl. 574; *Kempson v. Kempson*, 58 N. J. Eq. 94, 43 Atl. 97, 61 N. J. Eq. 303, 48 Atl. 244. In this latter case, the court, per Pitney, V. C., said: "She is in this predicament—she must either (1) go to the trouble and expense of appearing generally in the Dakota court to resist her husband's claim, or (2) she must attempt to appear specially for the purpose of contesting the jurisdiction of the court by showing his real domicile to be in New Jersey. Either of these defenses involves great labor and expense on her part. . . . It will be no hardship for the defendant herein to have the question of his actual domicile in Dakota settled by judicial investigation here before he proceeds with his suit there, and it seems to me that the ends of justice will be best attained by such preliminary determination."

¹⁴⁸ *Miller v. Gittings*, 85 Md. 601, 60 Am. St. Rep. 352, 37 Atl. 372.

¹⁴⁹ *Harris v. Pullman*, 84 Ill. 20, 25 Am. Rep. 416; *Edgell v. Clark*, 45 N. Y. Supp. 979, 19 App. Div. 199.

¹⁵⁰ In general, see *Cole v. Cunningham*, 133 U. S. 107, 10 Sup. Ct. 269; *Sandage v. Studebaker Bros. Mfg. Co.*, 142 Ind. 148, 51 Am. St. Rep. 165, 41 N. E. 380, 34 L. R. A. 363; *Miller v. Gittings*, 85 Md. 601, 60 Am. St. Rep. 352, 37 Atl. 372; *Wyeth Hardware Co. v. Lang*, 54 Mo. App. 147. To the effect that when there has been a general assignment for creditors, one will not be allowed to obtain a preference by suing in another state, see *Hawkins v. Ireland*, 64 Minn. 339, 58 Am. St. Rep. 534, 67 N. W. 73; *Kendall v. McClure*, 182 Pa. St. 1, 61 Am. St. Rep. 688, 37 Atl. 823. To the effect that an injunction may issue when a domestic creditor sues in a foreign jurisdiction to evade exemption laws, see *Keyser v. Rice*, 47 Md.

And where a domestic court has once taken jurisdiction, it may enjoin the parties from commencing proceedings elsewhere, the injunction being granted to protect the jurisdiction and to prevent a multiplicity of suits.¹⁵¹ The enforcement of a foreign judgment obtained by fraud will sometimes be enjoined.¹⁵² It must be borne in mind in all of the cases that the equity court acts only on the person, and not on the foreign tribunal. Hence, in order that its decree may have any effect, personal service of process must be made upon the defendant.

203, 28 Am. Rep. 448; *Moton v. Hull*, 77 Tex. 80, 13 S. W. 849, 8 L. R. A. 722; *Griggs v. Docter*, 89 Wis. 161, 46 Am. St. Rep. 824, 61 N. W. 761, 30 L. R. A. 360. But see *Cole v. Young*, 24 Kan. 435. And a creditor will not be restrained from suing in the state of his domicile, although property sought to be reached is exempt by the law of the debtor's domicile: *Griffith v. Langsdale*, 53 Ark. 71, 22 Am. St. Rep. 182, 13 S. W. 733. To the effect that a domestic creditor of one adjudged insolvent within the state may be enjoined from suing elsewhere, see *Cunningham v. Butler*, 142 Mass. 47, 56 Am. Rep. 657, 6 N. E. 72; *Hazen v. Lyndonville Nat. Bank*, 70 Vt. 543, 67 Am. St. Rep. 680, 41 Atl. 1046 (citing Pom. Eq. Jur., § 1318). It has been held that a mere difference in the law of evidence is not sufficient to warrant relief: *Edgell v. Clark*, 45 N. Y. Supp. 979, 19 App. Div. 199. And in *Thorndike v. Thorndike*, 142 Ill. 450, 32 N. E. 510, 21 L. R. A. 71, it was held that a domestic creditor will not be enjoined from suing in a state where the statute of limitations has not barred the debt, although barred in the state of domicile. See, also, *Carson v. Dunham*, 149 Mass. 52, 14 Am. St. Rep. 397, 20 N. E. 312, 3 L. R. A. 203 (mere difference in law not sufficient).

¹⁵¹ *Gage v. Riverside Trust Co.*, 86 Fed. 984; *Home Ins. Co. v. Howell*, 24 N. J. Eq. 238. See, also, *French v. Hay*, 22 Wall. 250, 22 L. ed. 857; *Pickett v. Ferguson*, 45 Ark. 177, 55 Am. Rep. 545 (although foreign court had acquired jurisdiction first, it could not do complete justice because all the parties were not before it).

¹⁵² *Engle v. Scheuerman*, 40 Ga. 206; *Stevens v. Central Nat. Bank*, 144 N. Y. 50, 39 N. E. 68; *Gray v. Richmond Bicycle Co.*, 167 N. Y. 348, 60 N. E. 663. But see *Metcalf v. Gilmore*, 59 N. H. 417, 47 Am. Rep. 217.

§ 671. **Injunctions Against Executions.**—In our discussion of equitable relief against judgments we have necessarily touched upon relief against executions. Where there is reason for relief against the former, there is, of course, ground for relief against the latter. In many cases, however, a judgment may be perfectly valid and yet there may be some vice in the execution itself or in the levy which will warrant the interference of equity. The rule in such cases is that equity will interfere when there is no adequate remedy at law.¹⁵³ The main question to be determined, therefore, after the vice itself is admitted, is whether there is a complete and adequate remedy at law.

In cases involving personal property there is ordinarily a complete and adequate remedy at law, and therefore relief is as a rule refused. When personal property is illegally taken damages are supposed to be sufficient to fully compensate for all the injury done.¹⁵⁴ Accordingly, actions of trespass, trover or replevin afford ample relief. In some cases, however, the property

¹⁵³ In the following cases relief was refused, the court holding that there is an adequate remedy at law: *Ricks v. Richardson*, 70 Miss. 424, 11 South. 935; *Treat v. Wilson*, 4 Kan. App. 586, 46 Pac. 322; *Hitchcock v. Culver*, 107 Ga. 184, 33 S. E. 35; *Rounsaville v. McGinnis*, 93 Ga. 579, 21 S. E. 123; *Driggs & Co.'s Bank v. Norwood*, 49 Ark. 136, 4 Am. St. Rep. 30, 4 S. W. 448; *Parker v. Oxendine*, 85 Mo. App. 212; *Straub v. Simpson*, 74 Mo. App. 230.

¹⁵⁴ In *Parsons v. Hartman*, 25 Or. 547, 42 Am. St. Rep. 803, 37 Pac. 61, 30 L. R. A. 98, it was held that a judgment debtor has no right to enjoin the sale of his personal property under execution on the ground that it is exempt by law from sale under judicial process, unless the property possesses a special value to the judgment debtor alone, such as a keepsake or memento of any kind, the loss of which cannot be compensated in damages. To same effect see *Henderson v. Bates*, 3 Blackf. 460. In some states it has been held that an injunction will issue against an execution in a replevin suit when a *bona fide* offer is made to restore the property: *Marks v. Willis*, 36 Or. 1, 78 Am. St. Rep. 752, 58 Pac. 526; *Eppinger v. Scott*, 130 Cal. 275, 62 Pac. 460.

is of such a peculiar nature and has such a peculiar value to the owner, that damages are not adequate. Such, for instance, are cases of family relics and heirlooms. Where the judgment defendant is the complainant, the ground of resisting the levy is frequently that the property is exempt from execution. Even in such cases, equity will not interfere unless some special reason is shown for its interference.¹⁵⁵ In cases where the complainant is a third party claiming the property the courts are more liberal; but even there relief will be refused when damages are deemed adequate. However, when it is inequitable to allow an execution to proceed, relief will be granted in equity if for any reason except laches on the part of the complainant, relief cannot be had at law.¹⁵⁶

§ 672. **Same—Real Property.**—In case of real property the relief is more freely granted. The judgment debtor will be given relief whenever the execution should not be enforced against certain portions of his property and he has no adequate remedy at law. A sale of property exempt from execution, or a sale under any invalid execution, passes no title to a purchaser; yet it casts a cloud upon the title which renders the land unsalable. It is upon this ground that the courts generally rest their jurisdiction. What constitutes a cloud on title is a mooted question in the various jurisdictions.¹⁵⁷ If,

¹⁵⁵ In the following cases relief was granted against executions on exempt property: *Smith v. Gufford*, 36 Fla. 481, 51 Am. St. Rep. 37, 18 South. 717; *Morris v. Carnahan* (Tex. Civ. App.), 31 S. W. 436; *Stout v. La Follette*, 64 Ind. 365; *Ryan v. Parris*, 48 Kan. 765, 30 Pac. 172. See, also, *Sinsabaugh v. Dun* (Ill.), 73 N. E. 390 (wrongful levy on books of mercantile agency and disclosure of contents enjoined).

¹⁵⁶ Thus, in *Gibson v. McClay*, 47 Neb. 900, 66 N. W. 851, one joint debtor was granted relief against an execution on the ground that the creditor had agreed to resort to the other debtors first.

¹⁵⁷ See *post*, chapter "Cloud on Title."

however, the sale is fair on its face and evidence must be introduced to show the invalidity, it is almost universally held that there is such a cloud as equity will prevent or remove. The question frequently arises where a debtor is entitled to a homestead exemption; and the courts uniformly hold that where a sale of a homestead will create a cloud on title relief will be granted.¹⁵⁸ And the suit may be brought by the holder of the equity of redemption when the homestead has been mortgaged.¹⁵⁹ Where realty is improperly sold in bulk when it is easily capable of subdivision, the owner may obtain an injunction, and especially where the result of sale in such a manner has been to sacrifice the property.¹⁶⁰ If a judgment has been satisfied, or an assignee of the judgment has contracted to save the debtor harmless, or if the judgment is neither a lien upon the property nor a personal charge upon the owner, relief will be granted to prevent a cloud on the title.¹⁶¹ An injunction has issued to restrain the sale of public school property on execution, although absolutely no title would pass by a sale.¹⁶² A holder of a mechanic's lien

158 *Ward v. Callahan*, 49 Kan. 149, 30 Pac. 176; *Vogler v. Montgomery*, 54 Mo. 577; *Tucker v. Kenniston*, 47 N. H. 267, 93 Am. Dec. 405; *Warren v. Kohr*, 26 Tex. Civ. App. 331, 64 S. W. 62; *Farnim Co. Bank v. Lowenstein* (Tex. Civ. App.), 54 S. W. 316; *Leachman v. Capps*, 89 Tex. 690, 36 S. W. 250; *Capps v. Leachman* (Tex. Civ. App.), 35 S. W. 397; *Gardner v. Douglass*, 64 Tex. 76.

159 *Ingraham v. Dyer*, 125 Mo. 491, 28 S. W. 840.

160 *Forbes v. Hall*, 102 Ga. 47, 66 Am. St. Rep. 152, 28 S. E. 915. See *Brady v. Carteret Realty Co.* (N. J.), 60 Atl. 938, where an injunction was issued until title could be determined, the judgment creditor having raised the question in order to buy cheaply.

161 *Phillips v. Kuhn*, 35 Neb. 187, 52 N. W. 881; *Plummer v. Talbott*, 21 Ky. Law Rep. 30, 50 S. W. 1097; *Predohl v. Sullivan*, 80 N. W. 903, 59 Neb. 311.

162 *State ex rel. Board of Education v. Tiedemann*, 69 Mo. 306, 33 Am. Rep. 498. In this case the court said: "It is true that relief could have been thus obtained, but this does not oust equitable jurisdiction in a case of this sort, for if it be the case that the public

who purchased the land has been allowed an injunction against a judgment creditor who levied on the land without reference to the lien.¹⁶³ Relief will not be granted, however, when the validity of the title is in dispute;¹⁶⁴ nor will an injunction issue to restrain a sale under foreclosure merely because the property will bring a better price if sold under partition.¹⁶⁵ The fact that the plaintiff in an action against an insolvent corporation intends to levy execution upon property which the corporation had undertaken to convey to other parties before the insolvency, does not show any right in the defendant corporation to restrain such levy.¹⁶⁶

§ 673. **Same—Property of Third Persons.**—It frequently happens that property of a third person is levied upon as belonging to the judgment debtor. In such cases the ordinary rules apply. An injunction will not lie to prevent the seizure or sale of ordinary personal property, for the owner has an adequate remedy at law.¹⁶⁷ When it is of peculiar value, however, relief may be granted because damages cannot be accurately ascertained and will not compensate.¹⁶⁸ If multiplicity of

school-house was not vendible under execution, equity would interfere to prevent a cloud from being cast upon the title by reason of a void sale, and also to prevent a multiplicity of suits springing from such void act.”

163 *Bowling v. Garrett*, 49 Kan. 504, 33 Am. St. Rep. 377, 31 Pac. 135. In general, see *Kirk v. United States*, 124 Fed. 325.

164 *Crawford v. Lamar*, 9 Colo. App. 83, 47 Pac. 665.

165 *Bradford v. Downs*, 48 N. Y. Supp. 1051, 24 App. Div. 97.

166 *Miller v. Waldoborough Packing Co.*, 88 Me. 605, 34 Atl. 527.

167 *Zanhizer v. Hefner*, 47 W. Va. 418, 35 S. E. 4; *Williams v. Farmers' Nat. Bank*, 22 Tex. Civ. App. 581, 56 S. W. 261; *Perrin v. Stevens* (Tex. Civ. App.), 29 S. W. 927; *Allen v. Windstandly*, 135 Ind. 105, 34 N. E. 699; *Van Norden v. Morton*, 99 U. S. 378, 25 L. ed. 453; *Troy Fertilizer Co. v. Prestwood*, 116 Ala. 119, 22 South. 262.

168 *Zanhizer v. Hefner*, 47 W. Va. 418, 35 S. E. 4 (*dictum*).

suits will result, or any other distinct ground for equitable interference is shown, relief may be granted.¹⁶⁹ Sometimes the seizure of property may result in financial ruin to the owner, and involve the destruction of his business. Such, for instance, may be the case when the entire stock in trade of a party is seized. The same result is reached when part of a telegraph line is levied upon. In such cases the remedy at law is clearly inadequate and equitable relief will be granted.¹⁷⁰

When real property of a third person is illegally levied upon relief is quite freely granted. The ground stated for interference in most of the cases is the prevention of a cloud on title. Generally a sale of such property is sufficient to constitute such a cloud.¹⁷¹ In some

169 Halley v. Ingersoll, 14 S. D. 7, 84 N. W. 201. In Overton v. Warner, 68 Kan. 96, 74 Pac. 651, it was held that an injunction will issue against a sale of property *in custodia legis*.

170 Watson v. Sutherland, 72 U. S. (5 Wall.) 74, 18 L. ed. 580; North v. Peters, 138 U. S. 271, 11 Sup. Ct. 346, 34 L. ed. 936; McGreery v. Sutherland, 23 Md. 471, 87 Am. Dec. 578; Sickels v. Combs, 10 Misc. Rep. 551, 32 N. Y. Supp. 181; Funk v. Brooklyn Glass & Mfg. Co., 25 Misc. Rep. 91, 53 N. Y. Supp. 1086; Walker v. Hunt, 2 W. Va. 491, 98 Am. Dec. 779; Southwestern Tel. & Tel. Co. v. Howard, 3 Tex. Civ. App. 335, 22 S. W. 524.

171 Bell v. Murray, 13 Colo. App. 217, 57 Pac. 488; Zimmerman v. Makepeace, 152 Ind. 199, 52 N. E. 992; Gale Mfg. Co. v. Sleeper (Kan.), 79 Pac. 648; Bean v. Everett, 21 Ky. Law Rep. 1790, 56 S. W. 403; Broussard v. Le Blanc, 44 La. Ann. 880, 11 South. 460; Hart v. Conolly, 49 La. Ann. 1587, 22 South. 809; Natalie Anthracite Coal Co. v. Ryon, 188 Pa. St. 138, 41 Atl. 462, 43 Wkly. Not. Cas. 265; Hammond v. Martin, 15 Tex. Civ. App. 570, 40 S. W. 347; Quimby v. Slipper, 7 Wash. 475, 38 Am. St. Rep. 899, 35 Pac. 116; Provident Life & Trust Co. v. Mills, 91 Fed. 435; Moore v. Kleppish, 104 Iowa, 319, 73 N. W. 830. In Bishop v. Moorman, 98 Ind. 1, 49 Am. Rep. 731, the court said: "The sale of land under color of judicial process is more than a mere fugitive trespass; it is the assertion of a permanent right to the land, and a full denial of the owner's title, and the rule is, that where there is an assertion of a permanent right to land the owner may maintain injunction if the right asserted is unfounded." See, also, *post*, chapter "Cloud on Title."

states, however, it is held that where there is a complete record title in the complainant, a sale under execution against a third party casts no cloud upon the title.¹⁷² Accordingly in such states more must appear. Where such a judgment and execution have the effect of a writ of possession, there is a sufficient cloud to warrant interference.¹⁷³

In accordance with the principles as laid down above, a wife has been allowed an injunction to prevent the sale of her separate property,¹⁷⁴ or of community property, on executions against the husband alone.¹⁷⁵ The holder of an equitable interest, such as a *cestui que trust*¹⁷⁶ or one who has a contract of purchase,¹⁷⁷ may enjoin sale under execution against the holder of the mere naked legal title. One who has sold land with

172 *Pelican River Milling Co. v. Maurin*, 67 Minn. 418, 69 N. W. 1149; *Coughran v. Swift*, 18 Ill. 414; *Carlin v. Hudson*, 12 Tex. 202, 62 Am. Dec. 521; *Cook v. Texas & P. Ry. Co.*, 3 Tex. Civ. App. 145, 22 S. W. 58; *Paddock v. Jackson*, 16 Tex. Civ. App. 655, 41 S. W. 700; *Brown v. Ikard* (Tex. Civ. App.), 77 S. W. 967. See, also, *West Jersey & S. R. Co. v. Smith* (N. J. Ch.), 60 Atl. 757, and cases cited. One in possession of land and claiming as owner is not entitled to restrain by injunction a sale of such land under execution sued out by a creditor of his grantor under the assumption that the title of the party in possession is fraudulent as to creditors. The *bona fides* of the conveyance can be fully tested and the rights of all claimants settled in a suit to recover the land by the purchaser at such execution sale: *Southerland v. Harper*, 83 N. C. 200.

173 *Wofford v. Booker*, 10 Tex. Civ. App. 171, 30 S. W. 67; *Bushong v. Rector*, 32 W. Va. 311, 25 Am. St. Rep. 817, 9 S. E. 225.

174 *Young v. First Nat. Bank*, 4 Idaho, 323, 392, 39 Pac. 557; *Davis v. Clark*, 26 Ind. 424, 89 Am. Dec. 471; *Bush v. Herring*, 113 Iowa, 158, 84 N. W. 1036. But the wife cannot enjoin such an execution when the judgment is against her husband and herself on a joint note: *Walters v. Cantrell* (Tex. Civ. App.), 66 S. W. 790.

175 *Grant v. Cole*, 23 Wash. 542, 63 Pac. 263; *Ross v. Howard*, 25 Wash. 1, 64 Pac. 794.

176 *Hawkins v. Willard* (Tex. Civ. App.), 38 S. W. 365.

177 *Parks v. People's Bank*, 97 Mo. 130, 10 Am. St. Rep. 295, 11 S. W. 41; *Rodriguez v. Buckley* (Tex. Civ. App.), 30 S. W. 1123.

covenants of warranty has been allowed to enjoin a sale under execution when the judgment has been satisfied.¹⁷⁸ A mortgagee has been allowed to enjoin a sale when his mortgage has wrongfully been marked satisfied,¹⁷⁹ or when a sale would tend to disperse the property.¹⁸⁰ In some jurisdictions a holder of an equitable lien under a deed of trust has been allowed an injunction to prevent an absolute sale in disregard of such deed;¹⁸¹ but elsewhere it is held that a mortgagee has a mere lien and no title to be clouded, and therefore relief has been refused.¹⁸² It has been held that an owner of a reversion in land cannot enjoin a sale under execution against a life tenant, because a sale passes only the interest of the life tenant.¹⁸³ In all these cases the decisions must depend upon the views the courts hold on the doctrine of cloud on title. In at least one jurisdiction it has been held that an injunction will not issue to prevent a levy on the property of a third person until the officer has been given notice so that he can abandon the levy.¹⁸⁴ If a levy will result in a multiplicity of suits, an injunction may issue.¹⁸⁵

178 *Huggins v. White*, 7 Tex. Civ. App. 563, 27 S. W. 1066.

179 *Ivory v. Kempner*, 2 Tex. Civ. App. 474, 21 S. W. 1006 (see, also, *sub nom.* *Kempner v. Ivory*, 29 S. W. 538). In this case it was held that an injunction will be granted to restrain an execution sale when the evidence on which the right of the complainants depends is not of record, nor shown in the papers through which the right is derived.

180 *Central Trust Co. of N. Y. v. Moran*, 56 Minn. 188, 57 N. W. 471, 29 L. R. A. 212.

181 *Phillips v. Winslow*, 57 Ky. (18 B. Mon.) 431, 68 Am. Dec. 729.

182 *American Freehold L. & M. Co. v. Maxwell*, 39 Fla. 489, 22 South. 751; *Covert v. Bray*, 26 Ind. App. 671, 60 N. E. 709.

183 *Stone v. Franklin*, 89 Ga. 195, 15 S. E. 47.

184 *Hinkle v. Baldwin*, 93 Mich. 422, 53 N. W. 534.

185 *Morgan v. Morgan*, 3 Stew. (Ala.) 383, 21 Am. Dec. 638.

§ 674. **Same—Not for Mere Irregularities.**—An execution sale will not be enjoined nor set aside for mere irregularity in the process. As stated by a court of high authority, "The rule is very general that a court of equity will not interfere to vacate a sale under legal process on account of irregularity in the issue of process, or in its execution; but, as is properly said, 'the application ought to be made to the court issuing the writ, and if made elsewhere ought not to be entertained.' There must be accident, surprise, mistake, or fraud, or some fact or circumstance affecting the sale itself, and not resting on the irregularity of the process, or irregularity in its execution, before a court of equity will take jurisdiction to vacate it."¹⁸⁶ As full relief can ordinarily be obtained by motion, there is no reason for equitable interference.¹⁸⁷ Accordingly, an injunction has been refused where relief was sought on the ground that part of the property levied upon did not belong to the complainant,¹⁸⁸ or that an execution was issued to another county when no execution had been taken out in the county where the judgment was rendered,¹⁸⁹ or where the judgment creditor will be entitled to another execution if one issued prematurely is enjoined.¹⁹⁰ When the individual personal property of a surviving partner, who is administrator of the partnership estate, is seized under execution on a judgment against the

¹⁸⁶ *Gardner v. Mobile & N. W. R. R. Co.*, 102 Ala. 635, 48 Am. St. Rep. 84, 15 South. 271.

¹⁸⁷ *Trieste v. Enslin*, 106 Ala. 180, 17 South. 356; *Gregory v. Ford*, 14 Cal. 138, 73 Am. Dec. 639; *Parker v. Jones*, 58 N. C. (5 Jones Eq.) 140, 75 Am. Dec. 441; *Wilson v. Miller*, 30 Md. 82, 96 Am. Dec. 563; *Supreme Lodge of Order of Select Friends v. Carey*, 57 Kan. 655, 47 Pac. 621; *Dunson v. Spradley* (Tex. Civ. App.), 40 S. W. 327.

¹⁸⁸ *Corder v. Steiner* (Tex. Civ. App.), 54 S. W. 277.

¹⁸⁹ *Norwood v. Orient Ins. Co.* (Tex. Civ. App.), 44 S. W. 188.

¹⁹⁰ *Dayton v. Commercial Bank*, 6 Rob. (La.) 17.

firm, a sale thereunder will not be restrained by injunction because the execution was issued in the name of a dead man, or the judgment, prior to the issuance of the execution, had been presented as a claim against the estate, and neither allowed nor disallowed, nor because the levy was made on individual personal property.¹⁹¹ An injunction will not issue because of mere defect in the notice of sale,¹⁹² nor because of a misdescription of the premises, when the land may be readily identified;¹⁹³ but where the description is so defective that the property will not bring a good price, equity will interfere.¹⁹⁴ The mere fact that property will not bring a good price if sold at the time is no ground, however, for equitable relief.¹⁹⁵ Miscellaneous cases are appended in the note.¹⁹⁶

¹⁹¹ *Mark v. Stephens*, 38 Or. 65, 84 Am. St. Rep. 750, 63 Pac. 824.

¹⁹² *Citizens' Nat. Bank v. Interior L. & I. Co.*, 14 Tex. Civ. App. 301, 37 S. W. 447.

¹⁹³ *Boggess v. Lowery*, 78 Ga. 539, 6 Am. St. Rep. 279, 3 S. E. 771.

¹⁹⁴ *Johnson v. Hanye*, 103 Ga. 542, 29 S. E. 914.

¹⁹⁵ *Nashville Trust Co. v. Weaver*, 102 Tenn. 66, 50 S. W. 763.

¹⁹⁶ An injunction has been allowed when an attorney has refused to accept the amount due on the judgment (*Cooper v. Whaley*, 90 Ga. 285, 15 S. E. 824); and where a previous execution has been satisfied (*Lock v. Slusher*, 102 Ky. 415, 43 S. W. 471; but see *Abercrombie v. Knox*, 3 Ala. 728, 37 Am. Dec. 721). An injunction was issued to prevent the making of a sheriff's deed in violation of a promise to postpone a sale: *Manning v. Lacey*, 97 Ga. 384, 23 S. E. 845. A complaint to enjoin the levy of an execution issued upon a judgment of a justice of the peace upon the property of the replevin bail, on the ground that there is sufficient personal property of the judgment debtor to satisfy the judgment, and that the officer threatens to levy on the property of the replevin bail is sufficient: *Elson v. O'Dowd*, 40 Ind. 300. Equity will enjoin a non-resident creditor who has consented to an assignment for benefit of creditors made in another state, from levying on the assigned estate, at the suit of the assignee: *Chafee v. Fourth Nat. Bank*, 71 Me. 514, 36 Am. Rep. 345. An injunction has issued to restrain execution on property mortgaged to the state: *Brady v. Johnson*, 75 Md. 445, 26 Atl. 49, 20 L. E. A. 737. The rule that prevails in some jurisdictions

that only the court which rendered the judgment has power to stay proceedings thereon has no application where the execution defendant sues to enjoin trespass on property sold under execution: *Humpich v. Drake* (Ky.), 44 S. W. 632. Where there is no pretense that a creditor is threatening to levy on land not liable to execution, there is no ground for injunction: *Ke-tuc-e-mun-guah v. McClure*, 122 Ind. 541, 23 N. E. 1080, 7 L. R. A. 782.

Equitable Remedies, Vol. II—72

CHAPTER XXXII.

REFORMATION AND CANCELLATION.

ANALYSIS.

- §§ 675-683. Reformation.
 - § 675. Reformation for mutual mistake.
 - § 676. Unilateral mistake—Fraud.
 - § 677. Illustrations—Mistake of law.
 - § 678. Illustrations—Continued.
 - § 679. No reformation in favor of a volunteer.
 - § 680. Negligence—Laches—Limitations.
 - § 681. Parties against whom reformation may be had.
 - § 682. Parol proof—Amount of proof.
 - § 683. Decree.
- §§ 684-688. Cancellation.
 - § 684. Scope of the remedy.
 - § 685. Adequate remedy by defense or action at law.
 - § 686. Equitable relief where consideration of conveyance has failed—Rescission of “support deeds.”
 - § 687. Ratification—Laches.
 - § 688. Restoration of consideration.

§ 675. **Reformation for Mutual Mistake.**—Reformation is appropriate in cases of *mutual* mistake,—that is, when an agreement has been made, or a transaction has been entered into or determined upon, as intended by all the parties interested, but in reducing such agreement or transaction to writing, through the mistake common to both parties, the written instrument fails to express the real agreement or transaction. In such a case the instrument may be corrected so that it shall truly represent the agreement or transaction actually made or determined upon according to the real purpose and intention of the parties.¹ It is to be observed that the mis-

¹ Pom. Eq. Jur., §§ 870, 1376. Quoted, *Shelby v. Creighton* (Neb.), 96 N. W. 382. These sections of Pom. Eq. Jur. are cited in Hoch-

take which is ground for this relief must be in reducing the contract to writing. "In every case, it must clearly and satisfactorily appear that the precise terms of the contract had been orally agreed upon, and that the writ-

stein v. Berghauser, 123 Cal. 681, 56 Pac. 547; Miles v. Miles (Miss.), 37 South. 112; Ordway v. Chace, 57 N. J. Eq. 478, 42 Atl. 149. Pom. Eq. Jur., § 1376, stating when reformation may be had, is quoted in Citizens' Nat. Bank v. Judy, 146 Ind. 322, 43 N. E. 259; Earl v. Van Natta, 29 Ind. App. 532, 64 N. E. 901; Dennis v. Northern Pac. Ry. Co., 20 Wash. 320, 55 Pac. 210; and cited in Barry v. Rownd, 119 Iowa, 105, 93 N. W. 67; Farmers' Loan & Tr. Co. v. Suydam (Neb.), 95 N. W. 867; Griffin v. Fries, 23 Fla. 173, 11 Am. St. Rep. 351, 2 South. 266 (to the effect that equity has jurisdiction to re-establish deeds accidentally lost or destroyed); Kruse v. Koelzer (Wis.), 102 N. W. 1072. To the effect that an instrument may be reformed for mutual mistake, see, also, Dulo v. Miller, 112 Ala. 687, 20 South. 981; Perry v. Sadler (Ark.), 88 S. W. 832; Capelli v. Dondero, 123 Cal. 324, 55 Pac. 1057; Kee v. Davis, 137 Cal. 456, 70 Pac. 294; Way v. Roth, 159 Ill. 162, 42 N. E. 321; Johnson v. Sherwood (Ind. App.), 73 N. E. 180; Smelser v. Pugh, 29 Ind. App. 614, 64 N. E. 943; Prescott v. Hixon, 22 Ind. App. 139, 72 Am. St. Rep. 291, 53 N. E. 391; Dalton v. Milwaukee Mech. Ins. Co. (Iowa), 102 N. W. 120; Tapley v. Herman, 95 Mo. App. 537, 69 S. W. 482; Slack v. Craft (N. J. Eq.), 57 Atl. 1014; Stafford v. Giles, 135 Pa. St. 411, 19 Atl. 1028; Warner, Moore & Co. v. Western Assur. Co. (Va.), 49 S. E. 499; Lord v. Horr, 30 Wash. 477, 71 Pac. 23; Arthur D. Jones & Co. v. New England Mtg. Sec. Co. (Wash.), 80 Pac. 796; Rowell v. Smith (Wis.), 102 N. W. 1 (*semble*). See, also, City of Defiance v. Schmidt, 123 Fed. 1 (mistake in using wrong seal on bonds corrected at suit of innocent holder); Barker v. Pullman's Palace Car Co., 124 Fed. 555; Henkleman v. Peterson, 154 Ill. 419, 40 N. E. 359.

But the mere fact that the instrument varies from, or does not fully express, the whole agreement of the parties, is no ground for reformation; as, where a verbal stipulation is omitted intentionally on the faith of an assurance that it shall be as binding as though incorporated into the writing: See 2 Pom. Eq. Jur., § 854, and note, and cases cited, where this distinction is fully explained.

Reformation is proper, although the defect might have been aided by parol and so made available as a defense at law: Greene v. Dixon, 119 Ala. 346, 72 Am. St. Rep. 920, 24 South. 422.

Upon the subject of reformation in general, see monographic note in 65 Am. St. Rep. 481 ff.

ing afterwards signed fails to be, as it was intended, an execution of such previous agreement, but, on the contrary, expresses a different contract."² A court of equity will not make a contract for the parties. The mistake may be either as to the contents or the effect of the instrument;³ but the mistake of both parties must be in regard to the same matter.⁴

§ 676. **Unilateral Mistake—Fraud.**—It is generally laid down that reformation will not be awarded on account of a mere unilateral mistake,—a mistake of but one party—standing alone.⁵ The reason is that in such a

² *Citizens' Nat. Bank v. Judy*, 146 Ind. 322, 43 N. E. 259, per Monks, J. "Courts of equity do not rectify contracts; they may and do rectify instruments purporting to have been made in pursuance of the terms of contracts": *Mackenzie v. Coulson*, L. R. 8 Eq. 368. See, also, *Whittemore v. Farrington*, 76 N. Y. 452; *Diman v. Providence, W. & B. R. Co.*, 5 R. I. 130; *Barrow v. Barrow*, 18 Beav. 5 (court will not interfere to make a settlement conformable with what would have been the contract between the parties if all the facts material to be known by them had been there present to their minds).

³ *Page v. Higgins*, 150 Mass. 27, 22 N. E. 63, 5 L. R. A. 152.

⁴ *Page v. Higgins*, 150 Mass. 27, 22 N. E. 63, 5 L. R. A. 152.

⁵ "If the court were to reform the writing to make it accord with the intent of one party only to the agreement, who averred and proved that he signed it, as it was written, by mistake, when it exactly expressed the agreement as understood by the other party, the writing, when so altered, would be just as far from expressing the agreement of the parties as it was before; and the court would have been engaged in the singular office, for a court of equity, of doing right to one party, at the expense of a precisely equal wrong to the other": *Diman v. Providence, W. & B. R. Co.*, 5 R. I. 130, per Ames, C. J. To the effect that mere unilateral mistake is not ground for reformation, see *Gun v. McCarthy*, L. R., Ir., 13 Ch. D. 304; *Fulton v. Colwell*, 112 Fed. 831, 50 C. C. A. 537, 110 Fed. 54; *Greenhaw v. Combs* (Ark.), 85 S. W. 768; *Williams v. Hamilton*, 104 Iowa, 423, 65 Am. St. Rep. 475, and monographic note, 73 N. W. 1029; *Whitworth v. Lowell*, 178 Mass. 43, 59 N. E. 760; *Green v. Stone*, 54 N. J. Eq. 387, 55 Am. St. Rep. 577, 34 Atl. 1099 (mistake must be mutual); *Doniol v. Commercial Fire Ins. Co.*, 34 N. J. Eq.

case there is no meeting of minds—no contract. A court of equity has no power to alter or reform an agreement, since that would in reality be making a contract for the parties. It is only the instrument evidencing the agreement that can be reformed. A unilateral mistake may be a ground for rescission, and sometimes cancellation will be decreed. In a few cases, where the facts seemed to warrant it, courts have made a decree for cancellation conditional upon a refusal of the defendant to consent to reformation.⁶ This, however, is an instance of the flexibility of the equitable jurisdiction rather than an extension of the remedy of reformation. Where, however, the instrument does not express the true intent of the parties, owing to mistake on one side coupled with fraud or inequitable conduct on the other, relief will be freely given.⁷ The ground of the jurisdiction in this case is the fraud of the defendant, rather than the mere mistake of the plaintiff.

30; *Christopher Co. v. 23d St. Co.*, 149 N. Y. 51, 43 N. E. 538; *Moran v. McLarty*, 75 N. Y. 25; *Fehlberg v. Cosine*, 16 R. I. 162, 13 Atl. 110.

⁶ *Garrard v. Frankel*, 30 Beav. 445; *Paget v. Marshall*, L. R. 28 Ch. D. 255.

⁷ See *Pom. Eq. Jur.*, § 1376. This section of *Pom. Eq. Jur.* is cited to this effect in *Crookston Imp. Co. v. Marshall*, 57 Minn. 333, 47 Am. St. Rep. 612, 59 N. W. 294; and quoted in *Citizens' Nat. Bank v. Judy*, 146 Ind. 322, 43 N. E. 259; *Earl v. Van Natta*, 29 Ind. 532, 64 N. E. 901; *Dennis v. Northern Pac. Ry. Co.*, 20 Wash. 320, 55 Pac. 210. Where, then, the defendant was aware not only that the instrument did not express the real agreement, but that the plaintiff was ignorant of the discrepancy between the instrument and the agreement, the case is one for reformation. "A party who admits that an instrument which a court of equity is asked to reform does not set forth the agreement as it was actually made, and as the other party believed it did, will not be heard to say that he intentionally brought about, or silently acquiesced in, the discrepancy between the instrument and the agreement as made": *Keister v. Myers*, 115 Ind. 312, 17 N. E. 161. In support of the jurisdiction, see *Cleghorn v. Zumwalt*, 83 Cal. 155, 23 Pac. 294 (code provision expressing the general rule of equity); *Town of Essex v. Day*, 52 Conn. 483; *Palmer v. Hartford Fire Ins. Co.*, 54 Conn. 488,

§ 677. Illustrations—Mistake of Law.—“If, ... after making an agreement, in the process of reducing it to a written form the instrument, *by means of a mistake of law*, fails to express the contract which the parties actually entered into, equity [may grant reformation], to the same extent as if the failure of the writing to express the real contract was caused by a mistake of fact. In this instance there is no mistake as to the legal import of *the contract actually made*; but the mistake of law prevents the real contract from being embodied in the written instrument. In short, if a written instrument fails to express the intention which the parties had in making the contract which it purports to contain, equity will grant its relief, affirmative or defensive, although the failure may have resulted from a mistake as to the legal meaning and operation of the terms or language employed in the writing. Among the ordinary examples of such errors are those as to the legal effect of a description of the subject-matter, and as to the import of technical words and phrases; but the rule is not confined to these instances.”⁸

§ 678. Illustrations—Continued.—“If one should execute a *release* so broad in its terms as to release his rights in property, of which he was wholly ignorant, and which was not in contemplation of the parties at the

⁹ Atl. 248; Welles v. Yates, 44 N. Y. 525; Kilmer v. Smith, 77 N. Y. 226, 33 Am. Rep. 613. See, also, Home Ins. Co. v. Virginia-Carolina Chem. Co., 109 Fed. 681; Fritz v. Fritz (Minn.), 102 N. W. 705; Le Comte v. Carson (W. Va.), 49 S. E. 238 (reformation for fraud or mistake).

⁸ Pom. Eq. Jur., § 845, and cases cited. See, also, Hunt v. Rhodes, 1 Pet. 1, 7 L. ed. 27; Chicago & A. Ry. Co. v. Green, 114 Fed. 676; Orr v. Echols, 119 Ala. 340, 24 South. 357 (quoting Pom. Eq. Jur., § 845); Dinwiddie v. Self, 145 Ill. 290, 33 N. E. 892; Wall v. Meilke, 89 Minn. 232, 94 N. W. 688 (quoting Pom. Eq. Jur., § 845); Rogers v. Castle, 51 Minn. 428, 53 N. W. 651; Canedy v. Marcy, 13 Gray, 373.

time the bargain for the release was made," a court of equity may either cancel the release or by reformation, restrain its application as intended.⁹ Where the same mutual mistake has been repeated in each one of a chain of conveyances, under such circumstances as to entitle any one of the vendees to a reformation as against his immediate vendor, the equity will work back through all, and entitle the last vendee to a reformation against the original grantor.¹⁰ Similarly, it has been held that if there is a mutual mistake in a mortgage in the description of property, and the same mistake is continued in the foreclosure decree and in the sheriff's deed to the foreclosure purchaser, equity will go back to the original transaction and reform the mortgage and decree as well as the deed, so as to make them conform to the intention of the parties concerned;¹¹ though in other cases such comprehensive relief, under these circumstances, has been refused.¹² Relief will not be given when the contract, as reformed, will have the same effect as before, nor if even after reformation it will still be invalid;¹³ and it has been held that it will not be

⁹ *Cholmondeley v. Clinton*, 2 Mer. 352; *Dungers v. Angove*, 2 Ves. 304; *Dambmann v. Schulting*, 75 N. Y. 55; *Cleghorn v. Zurwalt*, 83 Cal. 155, 23 Pac. 294.

¹⁰ *Blackburn v. Randolph*, 33 Ark. 119; *Tillis v. Smith*, 108 Ala. 264, 19 South. 374, and cases cited.

¹¹ *Busey v. Moraga*, 130 Cal. 586, 62 Pac. 1081; *Quivey v. Parker*, 37 Cal. 465; *Greeley v. De Cottes*, 24 Fla. 475, 5 South. 239; or if such relief is impossible, the purchaser may be quieted in his possession against the mortgagor: *Waldron v. Letson*, 15 N. J. Eq. 126.

¹² *Stephenson v. Harris*, 131 Ala. 470, 31 South. 445, and cases cited (too late to reform the decree); *Miller v. Kolb*, 47 Ind. 220.

¹³ *Gardner v. Knight*, 124 Ala. 273, 27 South. 298 (effect would remain the same); *McCrary v. Williams*, 127 Ala. 251, 28 South. 695 (mortgage would remain inoperative if corrected); *Day v. Shiver*, 137 Ala. 185, 33 South. 831 (not reformed as to description, because void as given for husband's debts).

awarded to give a party a remedy exactly equivalent to one he has lost by his own laches.¹⁴

§ 679. **No Reformation in Favor of a Volunteer.**—As a general rule, equity will not interfere in favor of a volunteer. Hence no relief will be awarded to a grantee in an imperfect conveyance which is not supported by either a valuable or meritorious consideration, against either the grantor or his representatives.¹⁵ A creditor taking the instrument either in payment or as collateral security, is not a volunteer, within the meaning of this rule.¹⁶ In some jurisdictions it is said that the rule is subject to the exception, that after the death of the donor equity will interfere to rectify a disposition which is clearly proved to have failed, through mistake, to carry out the donor's intention.¹⁷ While reformation

¹⁴ Daggett v. Ayer, 65 N. H. 82, 18 Atl. 169.

¹⁵ Enos v. Stewart, 138 Cal. 112, 70 Pac. 1005 (grantee in voluntary conveyance not entitled to relief against heirs of grantor); Powell v. Powell, 27 Ga. 36, 73 Am. Dec. 724; Gould v. Glass, 120 Ga. 50, 47 S. E. 505; McWhorter v. O'Neal (Ga.), 51 S. E. 288; Strayer v. Dickerson, 205 Ill. 257, 68 N. E. 767; Wait v. Smith, 92 Ill. 385; Comstock v. Coon, 135 Ind. 642, 35 N. E. 909; Else v. Kennedy, 67 Iowa, 376, 25 N. W. 290; Shears v. Westover, 110 Mich. 505, 68 N. W. 266; Henderson v. Dickey, 35 Mo. 120; Gwyer v. Spaulding, 33 Neb. 573, 50 N. W. 681; Powell v. Morisey, 98 N. C. 426, 2 Am. St. Rep. 343, 4 S. E. 185; Clark v. Hindman (Or.), 79 Pac. 56; Eaton v. Eaton, 15 Wis. 259; Willey v. Hodge, 104 Wis. 81, 76 Am. St. Rep. 852, 80 N. W. 75. "If there is a mistake or a defect, it is a mere failure in a bounty, which, as the grantor was not bound to make, he is not bound to correct": Adair v. McDonald, 42 Ga. 506.

The doctrine of "meritorious" consideration in equity is described, in another connection, in 2 Pom. Eq. Jur., §§ 588-590. For instance of reformation decreed in favor of one to whom the donor stood *in loco parentis*, see Huss v. Morris, 63 Pa. St. 367 (grandchildren).

¹⁶ Comstock v. Coon, 135 Ind. 640, 35 N. E. 909; Citizens' Nat. Bank v. Judy, 146 Ind. 322, 43 N. E. 259; Rea v. Wilson, 112 Iowa, 517, 84 N. W. 539; Miller v. Savage, 60 N. J. Eq. 204, 46 Atl. 632.

¹⁷ M'Mechan v. Warburton, L. R., Ir., 1 Ch. D. 435; Mattingly v. Speak, 4 Bush, 316; Huss v. Morris, 63 Pa. St. 367. See, how-

will not generally be granted in favor of a volunteer grantee, it will be given to a donor who shows that, through mistake, his deed does not carry out his intention.¹⁸

§ 680. **Negligence—Laches—Limitations.**—The mere neglect or omission to read or know the contents of a written instrument is not necessarily a bar to reformation. The relief is proper when the instrument fails to conform to the agreement between the parties, through mutual mistake or mistake coupled with fraud, however the mistake may have been induced.¹⁹ The doctrine of laches is applicable to these suits, and in some jurisdictions the statute of limitations is expressly made applicable. The rule is here, as in all cases of fraud or mistake, that the time does not begin to run until discovery of the mistake or until it ought to have been discovered.²⁰

ever, *Enos v. Stewart*, 138 Cal. 112, 70 Pac. 1005; *Willey v. Hodge*, 104 Wis. 81, 76 Am. St. Rep. 852, 80 N. W. 75.

¹⁸ *Jones v. McNealy*, 139 Ala. 379, 101 Am. St. Rep. 38, 35 South. 1022; *Crockett v. Crockett*, 73 Ga. 647; *Andrews v. Andrews*, 12 Ind. 348; *Day v. Day*, 84 N. C. 408; *Ferrell v. Ferrell*, 53 W. Va. 515, 44 S. E. 187.

¹⁹ See 2 Pom. Eq. Jur., § 856, and notes, where this subject is fully discussed. It is there shown that the defense, the plaintiff's negligence, is appropriate to the remedy of rescission rather than of reformation. In support of the text, see, also, *Albany City Sav. Inst. v. Burdick*, 87 N. Y. 40; *Hitchins v. Pettingill*, 58 N. H. 3; *West v. Suda*, 69 Conn. 60, 36 Atl. 1015 (failure to read is not negligence *per se*); *Story v. Gammell* (Neb.), 94 N. W. 982; *Smelser v. Pugh*, 29 Ind. App. 614, 64 N. E. 943. See, also, *Farwell v. Home Ins. Co. (C. C. A.)*, 136 Fed. 93; *Shields v. Mongollon Exploration Co. (C. C. A.)*, 137 Fed. 541. But see *contra*, *Reid, Murdock & Co. v. Bradley*, 105 Iowa, 220, 74 N. W. 896.

²⁰ In general, see *Bloomer v. Spittle*, L. R. 13 Eq. 427; *Ward v. Waterman*, 85 Cal. 488, 24 Pac. 930; *Citizens' Nat. Bank v. Judy*, 146 Ind. 322, 43 N. E. 259; *Carter v. Leonard*, 65 Neb. 670, 91 N. W. 574; *Grand View Bldg. Assn. v. Northern Assur. Co. (Neb.)*, 102 N. W. 246 (statute of limitations applies); *Van Houten v. Van*

§ 681. **Parties Against Whom Reformation may be Had.**—Reformation may be had against a party to an instrument, and against anyone taking from him without consideration or with notice.²¹ Accordingly, a purchaser or mortgagee who takes with notice is in the same position as the original party, so far as this remedy is concerned.²² A *bona fide* purchaser for value, and without notice, however, is not subject to the equity of the party injured by the mistake, and there can be no reformation against him.²³ In most jurisdictions, the equity for a reformation is superior to the liens of subsequent attaching and judgment creditors of the defendant.²⁴

In states where a married woman's deed must be executed with certain formalities, no reformation on ac-

Houten (N. J. Eq.), 59 Atl. 555; Sable v. Maloney, 48 Wis. 331, 4 N. W. 479. For a detailed treatment of the subject of laches, see *ante*, volume I, chapter I.

²¹ Cole v. Fickett, 95 Me. 265, 49 Atl. 1066; Kerchner v. Frazier, 106 Ga. 437, 32 S. E. 351; Citizens' Nat. Bank v. Judy, 146 Ind. 322, 43 N. E. 259. See, also, cases in succeeding notes.

²² In the following cases subsequent parties taking with notice were held subject to the equity: Thalheimer v. Lockhart (Ark.), 88 S. W. 591; Simpson v. Montgomery, 25 Ark. 365, 99 Am. Dec. 228; Adams v. Stevens, 49 Me. 362. Of course no reformation can be had as against innocent third parties not in privity with the original parties: Adams v. Baker, 24 Nev. 162, 77 Am. St. Rep. 799, 51 Pac. 252.

²³ See 2 Pom. Eq. Jur., §§ 735-785, and especially § 776; Garrard v. Frankel, 30 Beav. 445; Davidson v. Davidson, 42 Ark. 362; Boone v. Graham, 215 Ill. 511, 74 N. E. 559; Cross v. Bean, 81 Me. 525, 17 Atl. 710; Goode v. Riley, 153 Mass. 585, 28 N. E. 228.

²⁴ See 2 Pom. Eq. Jur. (3d ed.), §§ 721-724, and notes, and especially note (d) to § 721. In many jurisdictions where, by the express terms of the statute, these liens are superior to prior unrecorded conveyances or mortgages, the equity arising from a mistake, being an unrecordable interest, is held, notwithstanding the statute, to be superior to the subsequent recorded lien: See 2 Pom. Eq. Jur., § 721, note (a). In general, see Fort Smith Milling Co. v. Mikles, 61 Ark. 123, 32 S. W. 493; Kerchner v. Frazier, 106 Ga. 437, 32 S. E. 351; Rea v. Wilson, 112 Iowa, 517, 84 N. W. 539.

count of defects arising from non-compliance with statutory provisions will be decreed, since it would not only contravene the policy of the law but require her to make a contract which she has not made.²⁵ A mere mistaken description in her executed conveyance may, however, by the preponderance of authority be corrected against her;²⁶ and in some states where there are no disabilities upon a married woman's power to contract and convey, an instrument may be corrected as against her to the same extent as against any other person.²⁷

§ 682. **Parol Proof—Amount of Proof.**—It is the generally established rule in the United States that parol evidence of mistake is admissible in all cases and for all purposes, notwithstanding the fundamental doctrine of the law of evidence that parol proof is not admissible between the parties to vary a written instrument, and notwithstanding that the effect of the parol evidence may

²⁵ *Henderson v. Kirkland*, 127 Ala. 185, 28 South. 674 (*semble*); *Barrett v. Tewksbury*, 9 Cal. 13 (defective acknowledgment); *Breit v. Yeaton*, 101 Ill. 242; *Hamar v. Medsker*, 60 Ind. 413 (*dictum*); *McReynolds v. Grubb*, 150 Mo. 352, 73 Am. St. Rep. 448, 51 S. W. 822; *Cannon v. Beatty*, 19 R. I. 524, 34 Atl. 1111; *Justis v. English*, 30 Gratt. 565. See, also, *Gebb v. Rose*, 40 Md. 387. To the effect that an instrument cannot be reformed so as to include a home-
stead, see *O'Malley v. Ruddy*, 79 Wis. 147, 24 Am. St. Rep. 702, 48 N. W. 116.

²⁶ *Hamar v. Medsker*, 60 Ind. 413; *Stevens v. Holman*, 112 Cal. 345, 53 Am. St. Rep. 216, 44 Pac. 670; *Herring v. Fitts*, 43 Fla. 54, 99 Am. St. Rep. 108, 30 South. 804; *Christensen v. Hollingsworth*, 6 Idaho, 87, 96 Am. St. Rep. 256, 53 Pac. 211; *Snell v. Snell*, 123 Ill. 403, 5 Am. St. Rep. 526, 14 N. E. 684; *Parish v. Camplin*, 139 Ind. 1, 37 N. E. 607. But see *Bowden v. Bland*, 53 Ark. 53, 22 Am. St. Rep. 179, 13 S. W. 420.

²⁷ *Christman v. Colbert*, 33 Minn. 509, 24 N. W. 301 ("if it ever was a rule of law in this state that the deed of a married woman could not be reformed, it must be abrogated by our statutes, by which married women are, with comparatively unimportant exceptions, put upon the footing of *femes sole* as respects property and capacity to contract"); *Mills v. Driver* (Ark.), 81 S. W. 1058.

be to enlarge the scope of an instrument required by the statute of frauds to be in writing.²⁸

"The authorities all require that the parol evidence of the mistake, and of the alleged modification, must be most clear and convincing, . . . or else the mistake must be admitted by the opposite party; the resulting proof must be established beyond a reasonable doubt. Courts of equity do not grant the high remedy of reformation upon a probability, nor even upon a mere preponderance of the evidence, but only upon a certainty of the error."²⁹

²⁸ See 2 Pom. Eq. Jur., §§ 857-868, where the subject is discussed at length. Important recent cases, in addition to those there cited, are (§ 862) *Macomber v. Peckham*, 16 R. I. 485, 17 Atl. 910; *Goode v. Riley*, 153 Mass. 585, 28 N. E. 228; (§ 863) *Metropolitan Lumber Co. v. Lake Superior etc. Co.*, 101 Mich. 577, 60 N. W. 278 (part performance of parol variation); (§ 867) following the Massachusetts rule, *Macomber v. Peckham*, 16 R. I. 485, 17 Atl. 910.

²⁹ Pom. Eq. Jur., § 859; quoted with approval in *Hertzler v. Stephens*, 119 Ala. 333, 24 South. 521. "Until beyond reasonable controversy the mistake is made to appear, the writing must remain the sole expositor of the intent and agreement of the parties": *Hinton v. Insurance Co.*, 63 Ala. 488. "To reform a deed for alleged fraud or mistake requires more than a bare preponderance of evidence": *Stroupe v. Bridger* (Iowa), 90 N. W. 704; *Merchants' Nat. Bank v. Murphy* (Iowa), 101 N. W. 441; *Royer Wheel Co. v. Miller*, 20 Ky. Law Rep. 1831, 50 S. W. 62; *Mikiska v. Mikiska*, 90 Minn. 258, 95 N. W. 910; *Crookston Imp. Co. v. Marshall*, 57 Minn. 333, 47 Am. St. Rep. 612, 59 N. W. 294; *Fritz v. Fritz* (Minn.), 102 N. W. 705. The evidence must be "clear, unequivocal and satisfactory": *Chapman v. Dunwell*, 115 Iowa, 533, 88 N. W. 1067. See, also, *Farwell v. Home Ins. Co.* (C. C. A.), 136 Fed. 93; *Barker v. Pullman Co.* (C. C. A.), 134 Fed. 70; *A. J. Dwyer Pine Land Co. v. Whiteman*, 92 Minn. 55, 99 N. W. 362; *Duecker v. Goeres*, 104 Wis. 29, 80 N. W. 91; *Green v. Stone*, 54 N. J. Eq. 387, 55 Am. St. Rep. 577, 34 Atl. 1099. "The party alleging the mistake must show exactly in what it consists, and the correction that should be made. The evidence must be such as to leave no reasonable doubt upon the mind of the court as to either of these points": *Hearne v. Marine Ins. Co.*, 20 Wall. 488, 22 L. ed. 395; *Hochstein v. Berghauser*, 123 Cal. 681, 56 Pac. 547; *Clark v. Hadley* (Tenn.

§ 683. **Decree.**—A decree declaring the mistake and ordering reformation is generally sufficient to pass title, especially in the jurisdictions where, by statute, a decree is given the effect of a conveyance.³⁰ In a few instances, however, a conveyance by the defendant has been thought necessary.³¹ The principle that when equity once acquires jurisdiction it will be retained for full relief is applicable, and consequently additional equitable relief, such as specific performance, foreclosure, or legal relief in damages, may be awarded in the same suit.³² Under the reformed procedure as it exists

Ch.), 64 S. W. 403 (must be practically beyond a reasonable doubt). While it is frequently said that the mistake must be proved beyond a reasonable doubt, the courts do not generally require the degree of proof required by the criminal law: *Southard v. Curley*, 134 N. Y. 148, 30 Am. St. Rep. 642, 31 N. E. 330, 16 L. R. A. 561 (reviewing the authorities); *Wall v. Meilke*, 89 Minn. 232, 94 N. W. 688. But see *Fessenden v. Ockington*, 74 Me. 123. To the effect that a mere conflict of evidence does not necessitate refusal of relief, see *Sullivan v. Moorhead*, 99 Cal. 157, 33 Pac. 796. It has been said that the decision of the trial court is conclusive upon the appellate court: *Sullivan v. Moorhead*, 99 Cal. 157, 33 Pac. 796; but the accuracy of this *dictum* is more than doubtful.

³⁰ *White v. White*, L. R. 15 Eq. 235. For a collection of the statutes giving a decree the effect of a conveyance, see *ante*, volume I, chapter I.

³¹ *Malmesbury v. Malmesbury*, 31 Beav. 407; *Smith v. Greeley*, 14 N. H. 378; *Craig v. Kittredge*, 23 N. H. 231; *Gillespie v. Moon*, 2 Johns. Ch. 585, 602.

³² Upon this general subject, see Pom. Eq. Jur., §§ 231-242. Upon the application of the principle to reformation suits, see Pom. Eq. Jur. (3d ed.), § 238, notes 3 and (a); *Bieler v. Dreher*, 129 Ala. 384, 30 South. 22 (removing cloud on title); *Kee v. Davis*, 137 Cal. 456, 70 Pac. 294 (specific performance); *Taylor v. Glens Falls Ins. Co.*, 44 Fla. 273, 32 South. 887 (recovery on insurance policy); *Christensen v. Hollingsworth*, 6 Idaho, 87, 96 Am. St. Rep. 256, 53 Pac. 211 (foreclosure of mortgage); *Hallam v. Corlett*, 71 Iowa, 446, 32 N. W. 449 (specific performance); *Palmer Steel & Iron Co. v. Heat, Light & Power Co.*, 160 Ind. 232, 66 N. E. 690 (damages); *O'Keefe v. Irvington Real Estate Co.*, 87 Md. 196, 39 Atl. 423 (specific performance).

in many of the states, the legal relief may be granted without any actual equitable decree. Thus, a plaintiff may "sue upon a written agreement, setting forth the facts entitling him to a reformation, and seeking to recover the amount due upon the instrument as reformed. The judgment actually rendered is merely a legal judgment for the recovery of debt or damages, the equitable relief of a reformation not being actually decreed, but being assumed; the purely legal relief is awarded exactly as though the prior equitable relief had been in terms granted."³³

§ 684. **Cancellation; Scope of the Remedy.**—The equitable remedies of cancellation, rescission, surrender up, and discharge of instruments are one and the same remedy, depending upon the same rules.³⁴ They are frequently accompanied by an injunction against a suit at law upon the instrument,³⁵ or against the negotiation or transfer of the instrument to other persons.³⁶ The chief occasions giving rise to the exercise of this jurisdiction are mistake,³⁷ fraud (including constructive

³³ Pom. Eq. Jur., § 357. See, also, Pom. Eq. Jur., §§ 87, 183; Pom. Code Rem., § 80.

³⁴ "The decree for cancellation generally includes a direction for a surrender up, and, if necessary, for a discharge of record": Pom. Eq. Jur., § 1375, and note; § 1377, note 1, which see as to the jurisdiction in England to decree the delivery up of muniments of title, and other instruments of a peculiar and exceptional character, to the persons entitled to their custody and possession.

³⁵ Pom. Eq. Jur., § 1363, and note.

³⁶ Pom. Eq. Jur., § 1363, and note, § 1340, § 221.

³⁷ "Cancellation [for mistake] is appropriate when there is an apparently valid written agreement or transaction embodied in writing, while in fact, by reason of a mistake of both or one of the parties, either no agreement at all has really been made, since the minds of both parties have failed to meet upon the same matters, or else the agreement or transaction is different, with respect to its subject-matter or terms, from that which was intended": 2 Pom. Eq. Jur., § 870. Thus, rescission is not granted for a mutual mis-

fraud, in its manifold varieties), and illegality; but this enumeration is by no means exhaustive.³⁸

§ 685. Adequate Remedy by Defense or Action at Law.—

“The jurisdiction of equity to grant the remedy of cancellation exists and will always be exercised when it is necessary to protect or maintain equitable primary estates, interests, or rights; where, however, the estate, interest, or right is legal, the jurisdiction always *exists*, but its *exercise* depends upon the adequacy of the legal remedies,—a party being left to his affirmative or defensive remedy at law, where full and complete justice

take on a mere collateral matter, when the sources of information were open to both parties alike: *Sample v. Bridgforth*, 72 Miss. 293, 16 South. 876. It may be granted where the subject-matter of the agreement had no existence, but both parties supposed that it existed and treated on that understanding: *Hitchcock v. Giddings*, 4 Price, 135 (sale of remainder which had been destroyed); *Allen v. Hammond*, 11 Pet. 63, 9 L. ed. 633 (contract for services in establishment of a claim which had already been allowed): *Fritzler v. Robinson*, 70 Iowa, 500, 31 N. W. 61 (lease of land for mining coal, which proves to contain no coal). See, also, *Riegel v. American Life Ins. Co.*, 140 Pa. St. 193, 23 Am. St. Rep. 225, 21 Atl. 392, 11 L. R. A. 857 (surrender of life insurance policy relieved against, both parties erroneously supposing that the insured was still living); or for mistake as to the identity of the subject-matter, so that the minds of the parties never met: *Crowe v. Lewin*, 95 N. Y. 423 (defendant conveyed what he did not own and did not mean to sell; plaintiff bought what he meant to buy, but was ignorant of defendant's lack of title). As to rescission for mistake of law, see, especially, 2 Pom. Eq. Jur., §§ 847, 849, 850; as to plaintiff's negligence in not discovering the mistake, 2 Pom. Eq. Jur., § 856.

³⁸ For the elements constituting actual fraud that will be relieved against in equity, see 2 Pom. Eq. Jur., §§ 872-907; constructive fraud, §§ 922-974; illegality, §§ 929-942; application of the maxim *in pari delicto*, etc., §§ 401-403, 939-942, 916. For special rules relating to the rescission of settlements and compromises, see 2 Pom. Eq. Jur., §§ 850, 855; awards, §§ 871, 919; judgments, §§ 871, 914, and note, 919, and *ante*, chapter XXXI. As to canceling conveyances in fraud of creditors, see 2 Pom. Eq. Jur., §§ 966-974, and *post*, chapter on “Creditors' Bills.”

can thereby be done.³⁹ . . . A doubt was formerly entertained as to whether a court of equity ought to exercise its jurisdiction to order instruments absolutely void at law, and not merely voidable, to be delivered up and canceled, since the legal remedy of a party was adequate and complete, and no case was presented for equitable interference;⁴⁰ but it is now well settled that jurisdiction will be exercised in such cases,⁴¹ except where the invalidity of the instrument is apparent on its face."⁴²

39 Pom. Eq. Jur., § 1377, and note 1; quoted in *Seymour Water Co. v. City of Seymour* (Ind.), 70 N. E. 514. It should be borne in mind that in England the exercise of the jurisdiction which exists in all cases of fraud, whatever the nature of the remedy invoked, depends, not on the inadequacy of the legal defense or remedy, but on considerations of convenience merely, governed by the circumstances of each case. See Pom. Eq. Jur., § 912, and notes; *Hoare v. Bremridge*, L. R. 8 Ch. App. 22; *Traill v. Baring*, 4 De Gex, J. & S. 318. This broad view of the jurisdiction where cancellation is sought because of fraud appears to be followed (but not very consistently) by a few courts in this country. It appears to be the view in Alabama (*Merritt v. Ehrman*, 116 Ala. 278, 22 South. 514); in Michigan (*John Hancock Mut. L. Ins. Co. v. Dick*, 114 Mich. 337, 72 N. W. 179, 43 L. R. A. 566); in New Jersey (*Anderson v. Eggers*, 61 N. J. Eq. 85, 47 Atl. 727; *Hubbard v. International Merc. Agency* (N. J. Eq.), 59 Atl. 24); and in Massachusetts, since the statute conferring full equity jurisdiction (*Nathan v. Nathan*, 166 Mass. 294, 44 N. E. 221, and cases cited; see, also, *Gargans v. Pope*, 184 Mass. 571, 100 Am. St. Rep. 575, 69 N. E. 343) and perhaps in a few other states (see 6 Cyc. 291, note 31); but is generally rejected in other jurisdictions: See Pom. Eq. Jur., § 914.

40 Pom. Eq. Jur., § 1377, and note 3, citing *Ryan v. Mackmath*, 3 Brown Ch. 15; *Hilton v. Barrow*, 1 Ves. 284; *Franco v. Bollon*, 3 Ves. 368, and *Bromley v. Holland*, 5 Ves. 610, 618.

41 Pom. Eq. Jur., § 1377, and note 4, citing many English cases. As illustrations of the cancellation of instruments void because forged, see *Sharon v. Hill*, 20 Fed. 1, 36 Fed. 337; *Schmidt v. West*, 104 Fed. 272; *Alexander v. Davis*, 42 W. Va. 465, 26 S. E. 291; *In re Cooper*, 20 Ch. D. 611.

42 Pom. Eq. Jur., § 1377, and note 5; quoted in *Fitzmaurice v. Mosier*, 116 Ind. 365, 9 Am. St. Rep. 854, 16 N. E. 175, 19 N. E. 180; cited in *Otis v. Gregory*, 111 Ind. 504, 13 N. E. 39. See, also, *Simpson v. Lord Howden*, 3 Mylne & C. 97; *Peirsoll v. Elliott*, 6

Subject to this limitation, the remedy at law is usually inadequate, and the jurisdiction of equity exercised as a matter of course, (1) where the invalid instrument creates a cloud on title to land.⁴³ (2) Where the instrument is negotiable and not yet mature, "because in such cases if the present unlawful holder, although the legal defense to an action by him would be perfect, should transfer the security to a *bona fide* purchaser, such legal defense would be cut off."⁴⁴ In this case, it is usual to enjoin the transfer of the instrument, as well as to order its surrender.⁴⁵

Where, however, the instrument against which the complainant claims a defense does not fall within either of these classes—where it is not a cloud upon the title to land, and where there is no danger that the defense will be lost by the transfer of the instrument to a *bona fide* purchaser,—there is the sharpest conflict among the authorities as to the propriety of the remedy of cancellation. On the one hand it is held, in a considerable group of cases, that the danger of loss of evidence in support of the defense, through the intentional delay of

Pet. 95, 8 L. ed. 332; O'Connell v. Noonan, 1 App. Cas., D. C., 332; Venice v. Woodruff, 62 N. Y. 462, 20 Am. Rep. 495; S. L. Sheldon Co. v. Mayers, 81 Wis. 627, 51 N. W. 1082.

⁴³ See *post*, chapter XXXVI.

⁴⁴ Pom. Eq. Jur., § 221, and note 8; § 1377, and note 7.

⁴⁵ Pom. Eq. Jur., § 1340, note 1; § 1360, note 4; Smith v. Aykewell, 3 Atk. 566; Breathwit v. Rogers, 32 Ark. 758; Hairalson v. Carson, 111 Ga. 57, 36 S. E. 319; Maclean v. Fitzsimmons, 80 Mich. 336, 45 N. W. 145; Paterson v. Baker, 51 N. J. Eq. 49, 26 Atl. 324; Scott v. Menasha, 84 Wis. 73, 54 N. W. 263. See, however, Vannatta v. Lindley, 198 Ill. 40, 92 Am. St. Rep. 270, 64 N. E. 735 (effect of statute). If the defense to the negotiable instrument is one (such as forgery) that is available against a *bona fide* purchaser, the jurisdiction is not exercised as a matter of course, but depends on the same considerations as to the adequacy of the defense at law which govern the cases of overdue or non-negotiable instruments.

the holder of the instrument in bringing suit thereon, is sufficient to warrant the exercise of the jurisdiction;⁴⁶ and this, too, even where the holder of the instrument has already brought suit at law upon it, since the prosecution of such suit is within his control, and may be delayed or withdrawn, and another brought at a time

⁴⁶ *Martin v. Graves*, 5 Allen, 601 (quoted in 1 Pom. Eq. Jur., § 221, note 7); *Commercial Ins. Co. v. McLoon*, 14 Allen, 351 (insurance policy); *Fuller v. Percival*, 126 Mass. 381 (promissory note, overdue, obtained by fraud); *Ritterhoff v. Puget Sound Nat. Bank* (Wash.), 79 Pac. 601 (citing Pom. Eq. Jur., § 1377); *Sharon v. Hill*, 20 Fed. 1 (forged contract of marriage); *Schmidt v. West*, 104 Fed. 272 (forged note); *Nathan v. Nathan*, 166 Mass. 294, 44 N. E. 221; *Fitzmaurice v. Mosier*, 116 Ind. 363, 9 Am. St. Rep. 854, 16 N. E. 175, 19 N. E. 180 (negotiable instrument, after maturity, canceled for mistake). For further instances see 2 Pom. Eq. Jur., § 914, note 3. Some federal courts have found support for assuming jurisdiction on the extraordinary ground that the action to which complainant would be called upon to make defense might be an action in a state court: *Mutual Life Ins. Co. v. Pearson*, 114 Fed. 395, 397; *United States L. Ins. Co. v. Cable*, 98 Fed. 761, 763, 39 C. C. A. 264; *Mutual Life Ins. Co. v. Blair*, 130 Fed. 971. These cases have been practically overruled, however, in the late case of *Cable v. United States Life Ins. Co.*, 191 U. S. 288, 24 Sup. Ct. 74, 48 L. ed. 232.

It is the rule in England that there is no jurisdiction to cancel or enjoin suit upon an instrument on the ground of danger of loss of evidence to support the defense, where that defense is one that does not render the contract void in its inception: *Thornton v. Knight*, 16 Sim. 509; *Cooper v. Joel*, 1 De Gex, F. & J. 240; *Brooking v. Maudslay*, L. R. 38 Ch. D. 636. This distinction does not appear to be followed by the American courts; where the relief is denied in cases of defenses arising subsequent to the inception of the contract, the denial is put upon the usual ground, that the danger is not so apparent as to warrant equitable interposition; see *Connecticut Ins. Co. v. Home Ins. Co.*, 17 Blatchf. 142, Fed. Cas. No. 3107 (cancellation granted of insurance policy for breach of condition to remain temperate); *Connecticut Ins. Co. v. Bear*, 26 Fed. 582 (same, cancellation refused); *Lewis v. Tobias*, 10 Cal. 574 (payment of note; cancellation refused); *Erickson v. First Nat. Bank*, 44 Neb. 622, 48 Am. St. Rep. 753, 62 N. W. 1078, 28 L. R. A. 577 (alteration; cancellation refused).

when an unconscionable advantage may be taken.⁴⁷ But on the whole, the majority of the cases repudiate the idea that the mere danger of loss of evidence to support a future defense is a sufficient ground for immediate relief in equity against the instrument, unless some special circumstances are shown which render such delay more than ordinarily hazardous;⁴⁸ and *a*

⁴⁷ *Ferguson v. Fisk*, 28 Conn. 501; *Buxton v. Broadway*, 45 Conn. 540 ("on this question we can consider only what means of redress the law itself furnishes the petitioner, and not what he may chance to get through the indulgence of the respondent"); *United States L. Ins. Co. v. Cable*, 98 Fed. 761, 39 C. C. A. 264; *Andrews v. Frierson*, 134 Ala. 626, 33 South. 6; *John Hancock M. L. Ins. Co. v. Dick*, 114 Mich. 337, 72 N. W. 179, 43 L. R. A. 566.

⁴⁸ In many of the cases, the fact that the testimony of witnesses may be perpetuated under statutory provisions is assigned as a reason for holding that there is no danger of loss of evidence. See, in general, *Cable v. United States Life Ins. Co.*, 191 U. S. 288, 24 Sup. Ct. 74; *Home Ins. Co. v. Stanchfield*, 1 Dill. 424, 12 Fed. Cas. No. 6660 (insurance policy; suit to cancel for fraud brought after loss); *Globe Mut. L. Ins. Co. v. Reals*, 79 N. Y. 202 (same); *Connecticut Mut. L. Ins. Co. v. Bear*, 26 Fed. 582 (insurance policy, forfeited by breach of condition to remain temperate); *Cincinnati etc. R. Co. v. McKeen*, 64 Fed. 36, 24 U. S. App. 218, 12 C. C. A. 14 (negotiable instrument after maturity; illegality); *Lewis v. Tobias*, 10 Cal. 574 (overdue note; payment); *Vannatta v. Lindley*, 198 Ill. 40, 92 Am. St. Rep. 270, 64 N. E. 735; *Erickson v. First Nat. Bank*, 44 Neb. 622, 48 Am. St. Rep. 753, 62 N. W. 1078, 38 L. R. A. 377 (altered note); *Allerton v. Belden*, 49 N. Y. 373 (usurious note); *Venice v. Woodruff*, 62 N. Y. 462, 20 Am. Rep. 495 (unauthorized municipal bonds); *Trimble v. Minnesota Threshing Co.*, 10 Okla. 578, 64 Pac. 8 (quoting *Pom. Eq. Jur.*, § 914). For further instances, see 2 *Pom. Eq. Jur.*, § 914, note 3.

But other circumstances may exist which render the complainant's remedy by defense to a future suit on the instrument inadequate. The most important of such circumstances is, that the complainant is exposed to a multiplicity of suits, either successive suits by the one defendant (as in *Mutual Life Ins. Co. v. Pearson*, 114 Fed. 395), or numerous independent suits by separate holders of different instruments, the defenses to which present but a single issue of fact or law, which may be determined in equity by a single suit to which all the holders are made parties defendant; see 1 *Pom. Eq. Jur.* (3d ed.), § 261, note (pp. 419, 420); *Springport v. Teutonia Sav.*

fortiori, refuse to interfere where an action at law has already been begun upon the instrument, and the defense may be interposed therein.⁴⁹

In another group of cases, in many of which the complainant is a vendee of land or chattels, the question of inadequacy of the legal remedy concerns, not a legal defense in a future action against the complainant, but the alternative legal remedy that may be pursued by him, as for recovery of the purchase price, of damages for deceit, and the like. This question, in the main, depends upon the special circumstances of the individual case.⁵⁰ It is well established that a stockholder

Bank, 75 N. Y. 397; Louisville N. A. & C. R. Co. v. Ohio Val. I. & C. Co., 57 Fed. 42, 45; cf. Farmington Village Corp. v. Sandy R. Nat. Bank, 85 Me. 46, 26 Atl. 965 (jurisdiction declined because no vexatious litigation appeared to be threatened, and equitable relief was therefore unnecessary); Scott v. McFarland, 70 Fed. 280 (no common question for decision).

⁴⁹ Grand Chute v. Winegar, 15 Wall. 373, 21 L. ed. 174 (unauthorized municipal bonds); Insurance Co. v. Bailey, 13 Wall. 616, 20 L. ed. 501; Shain v. Belvin, 79 Cal. 262, 21 Pac. 747; Chase's Exr. v. Chase, 50 N. J. Eq. 143, 24 Atl. 914; Quebec Bank v. Weyand, 30 Ohio St. 126.

But here, too, exceptional circumstances may render a defense in the actions already brought an inadequate protection; as where several separate suits have been brought against complainant by persons claiming to be assignees of an instrument executed by him, and his defense is fraud in obtaining the instrument; interpleader cannot be had, since complainant denies any liability on the instrument; and if left to his defense at law, he must try several actions to secure a single right: McHenry v. Hazard, 45 N. Y. 580.

⁵⁰ See cases collected by the author in 6 Cyc. 295-297; Boyce v. Grundy, 3 Pet. 210, 7 L. ed. 655 (rescission at suit of defrauded vendee of land; explained in Buzard v. Houston, 119 U. S. 347, 7 Sup. Ct. 249, 30 L. ed. 451). It is the general rule that a vendee of land in possession under a warranty deed cannot have rescission on the ground of defective title, unless in a case of fraud, but is confined to the remedy at law upon the covenants of his deed; see Parker v. Parker, 93 Ala. 80, 9 South. 426; Sherwood v. Salmon, 5 Day (Conn.), 439, 5 Am. Dec. 167; Campbell v. Whittington, 5 J. J. Marsh. (Ky.) 96, 20 Am. Dec. 241; Miller v. Miller, 47 Minn. 546,

may procure the cancellation of a subscription obtained by fraud, since a remedy which did not destroy his *status* as stockholder would leave him subject to liabilities imposed by law.⁵¹

§ 686. **Equitable Relief Where Consideration of Conveyance has Failed—Rescission of "Support Deeds."**—It is, of course, the general rule that the mere failure by a grantee to perform a promise, which formed the whole or part of the consideration inducing an executed conveyance, gives rise to no right of rescission in the grantor, either at law or in equity, unless such promise amounts to a condition;⁵² and it is a rule of construc-

612, 50 N. W. 612, and cases cited; *Abbott v. Allen*, 2 Johns. Ch. 519, 7 Am. Dec. 554; *Ryerson v. Willis*, 81 N. Y. 277; *Thompson v. Jackson*, 3 Rand. (Va.) 504, 15 Am. Dec. 721; *Decker v. Schulze*, 11 Wash. 47, 48 Am. St. Rep. 858, 39 Pac. 261, 27 L. R. A. 335; *Reuter v. Lowe*, 86 Wis. 106, 56 N. W. 472. But see *Matthews v. Crowder*, 111 Tenn. 737, 69 S. W. 779 (equity may grant relief when grantor insolvent). See, also, *Fields v. Clayton*, 117 Ala. 538, 67 Am. St. Rep. 189, 23 South. 530.

In general, in cases of non-performance or defective performance of an executory contract by one party, entitling the other party to abandon it, the legal remedy is adequate; *Blake v. Pine Mountain Iron etc. Co.*, 76 Fed. 624, 43 U. S. App. 490, 22 C. C. A. 430. See, also, *ante*, note 46. On the other hand, a group of cases in which the circumstances have often rendered legal relief inadequate, and rescission by a decree in equity the only suitable remedy, is that of defective performance by water companies of their agreements to furnish municipalities with water in stipulated quantities; see *Farmers' L. & T. Co. v. Galesburg*, 133 U. S. 156, 10 Sup. Ct. 316, 33 L. ed. 573; *Winfield v. Winfield Water Co.*, 51 Kan. 70, 32 Pac. 663; *Grand Haven v. Grand Haven Waterworks Co.*, 99 Mich. 106, 57 N. W. 1075; *Light etc. Co. v. Jackson*, 73 Miss. 598, 19 South. 771.

⁵¹ *Benton v. Ward*, 47 Fed. 253; *Bosley v. National Mach. Co.*, 123 N. Y. 550, 25 N. E. 990; *Negley v. Hagerstown etc. Co.*, 86 Md. 692, 39 Atl. 506; *Bosher v. Richmond etc. Land Co.*, 89 Va. 455, 37 Am. St. Rep. 879, 16 S. E. 360. See 2 Pom. Eq. Jur., § 881, and cases cited.

⁵² *Piedmont Land Imp. Co. v. Piedmont F. etc. Co.*, 96 Ala. 389, 11 South. 332; *Chicago T. & M. R. Co. v. Titterington*, 84 Tex. 218,

tion that, in case the language or intention is doubtful, "the promise or obligation of the grantee will be construed to be a covenant, limiting the grantor to an action thereon, and not a condition subsequent, with the right to defeat the conveyance."⁵³ This rule has been found to work a great hardship in the frequent cases where an aged person has conveyed all his property to a son or other relative on the consideration, often oral, that the grantee shall support and care for the grantor during the remainder of the grantor's life, and the grantee, while retaining the land, has abandoned the performance of his obligation. Legal relief by periodic suits for damages is manifestly inadequate; and many courts have sought to evade the operation of the rule and afford the grantor some equitable relief that should include the reinvesting of his title to the land. Thus, the courts of Illinois, in a series of cases, have decreed rescission, based on a legal presumption of the grantee's fraudulent intention, at the time of procuring the conveyance, to fail in the performance of his obligation.⁵⁴

31 Am. St. Rep. 39, 19 S. W. 472. It is assumed, of course, in the present discussion that the deed is not voidable for fraud, undue influence, violation of trust, or of an actual confidential relation (as in *Becker v. Schwerdtle*, 141 Cal. 386, 74 Pac. 1029), or other well-recognized ground for rescission.

⁵³ *Chicago T. & M. R. Co. v. Titterington*, 84 Tex. 218, 31 Am. St. Rep. 39, 19 S. W. 472.

⁵⁴ *Frazier v. Miller*, 16 Ill. 48; *Oard v. Oard*, 59 Ill. 45; *Kusch v. Kusch*, 143 Ill. 353, 32 N. E. 267; *Cooper v. Gum*, 152 Ill. 471, 39 N. E. 267; *McClelland v. McClelland*, 176 Ill. 83, 51 N. E. 559; *Fabrice v. Von der Brelie*, 190 Ill. 460, 60 N. E. 835; *Pittenger v. Pittenger*, 208 Ill. 582, 70 N. E. 699 (no cancellation unless a substantial failure on grantee's part). It logically results from this theory that when the original grantee dies and there is a subsequent failure of performance on the part of the grantee's children, there can be no rescission, since the court can indulge no presumption of fraudulent intention on their part in procuring the deed: *Stebbins v. Petty*, 209 Ill. 291, 101 Am. St. Rep. 243, 70 N. E. 673. Since the hardship is the same in this case, it is regrettable that the Illinois

In Wisconsin and Indiana the grantee's promise, though oral, is treated as a condition subsequent, on breach of which the grantor has the right of re-entry, and, generally, the right to have his title quieted or the cloud cast thereon by the conveyance removed.⁵⁵ In a number of other states the courts have not been at pains to bring the case within the analogy of any principle of general application, but have granted cancellation or a reconveyance on the mere ground of the hardship of the situation and the inadequacy of the legal remedy of damages,⁵⁶ thus adding to the long list of construc-

courts did not discover some less artificial reason in support of the equity jurisdiction assumed by them in these cases.

⁵⁵ *Wanner v. Wanner*, 115 Wis. 196, 91 N. W. 671; *Glocke v. Glocke*, 113 Wis. 303, 89 N. W. 118, 57 L. R. A. 458 (reviewing earlier cases); *Knutson v. Bostrak*, 99 Wis. 469, 75 N. W. 156; *Cree v. Sherfy*, 138 Ind. 354, 37 N. E. 787.

⁵⁶ *Penfield v. Penfield*, 41 Conn. 474; *Patterson v. Patterson*, 81 Iowa, 626, 47 N. W. 768; *Lane v. Lane* (Ky.), 50 S. W. 857; *Lockwood v. Lockwood*, 124 Mich. 627, 83 N. W. 613; *Reid v. Burns*, 13 Ohio St. 49; *Lowman v. Crawford*, 99 Va. 688, 40 S. E. 17; *Wilfong v. Johnson*, 41 W. Va. 283, 23 S. E. 730. In *Grant v. Bell* (R. I.), 58 Atl. 951 (Stinness, C. J.), the agreement was stated to create an implied trust, and reconveyance was decreed; but no analogy is suggested to other species of constructive trusts, and the cases cited in the opinion of this able judge contain no hint of such a theory. In the interesting case of *Keister v. Cubine*, 101 Va. 768, 45 S. E. 285, it was held that, while it is "the right and duty of a court of equity to take jurisdiction in this class of cases, because the remedy is manifestly inadequate at law," rescission is not appropriate under all circumstances. In this case the grantee had faithfully performed her part of the contract until her death; and the default in performance was not that of her heirs, who were infants, but of her surviving husband, who was not a party to the contract. The decree placed the property in the hands of a receiver, to be administered primarily for the support of the grantor, and, after that, for the benefit of the infant heirs. In Oregon, also, where it is held that cancellation is not a permissible remedy for the non-performance, the court will make the support of the grantor a charge upon the property: *Patton v. Nixon*, 33 Or. 159, 52 Pac. 1048. It appears to the author that less violence is done to established principles by thus raising a lien or charge *ex aequo et bono* in the

tive frauds a new and independent species. In still other states equitable relief in this class of cases is refused, in obedience to the general rule stated at the beginning of this paragraph.⁵⁷

§ 687. Ratification—Laches.—One who ratifies a transaction, after obtaining knowledge of the facts, cannot come into equity for cancellation. This doctrine rests “upon a distinct principle of public policy, that all that justice or equity requires for the relief of a party having such cause to impeach a contract is that he should have but one fair opportunity, after full knowledge of the rights, to decide whether he will affirm and take the benefits of the contract, or disaffirm it and demand the consequent redress.”⁵⁸ Ratification may be either express, or implied from the conduct of the parties.⁵⁹ Any dealing between the parties inconsistent with an

grantor's favor than by annulling the deed on any of the grounds suggested; notwithstanding the general rule that the “grantor's lien,” as such, “does not exist in behalf of any uncertain, contingent, or unliquidated demand”: 3 Pom. Eq. Jur., § 1251, and notes.

⁵⁷ Gardner v. Knight, 124 Ala. 273, 27 South. 298; Brand v. Power, 110 Ga. 522, 36 S. E. 53; Anderson v. Gaines, 156 Mo. 664, 57 S. W. 726.

⁵⁸ Emma Silver Min. Co. v. Emma Silver Min. Co. of New York, 7 Fed. 401, per Choate, Dist. J.

⁵⁹ Savery v. King, 5 H. L. Cas. 627, 2 Jur., N. S., 503, 25 L. J. Ch. 482, 4 Wkly. Rep. 571; Litchfield v. Browne, 70 Fed. 141, 36 U. S. App. 130, 17 C. C. A. 28; Baker v. Maxwell, 99 Ala. 584, 14 South. 568; Olivas v. Olivas, 61 Cal. 382; McClelland v. McClelland, 176 Ill. 83, 51 N. E. 559; Tarkington v. Purvis, 128 Ind. 182, 25 N. E. 879, 9 L. R. A. 607; Blackman v. Wright, 96 Iowa, 541, 65 N. W. 843; Parsons v. McKinley, 56 Minn. 464, 57 N. W. 1134; Arnold v. Hagerman, 45 N. J. Eq. 186, 14 Am. St. Rep. 712, 17 Atl. 93; Dennis v. Jones, 44 N. J. Eq. 513, 6 Am. St. Rep. 899, 14 Atl. 913; Town of Cherry Creek v. Becker, 123 N. Y. 161, 25 N. E. 369; Knutson v. Bostrak, 99 Wis. 469, 75 N. W. 156. See Pom. Eq. Jur., §§ 897, 916, 964, for a full statement of the doctrine of ratification.

intention to rescind,⁶⁰ such as payment or receipt of the purchase price,⁶¹ taking the benefits of the contract, or exercising dominion over the property,⁶² and the like, after knowledge of the facts, is evidence, more or less conclusive, of a ratification. The act must be unequivocal, however, and must show an election to retain the property, after discovering the deceit, before the right to rescind is gone.⁶³

The doctrine of laches applies to this, as to all other equitable remedies. Consequently, unexcused delay, coupled with other circumstances, such as change of position, loss of evidence, and the like, will bar relief.⁶⁴

⁶⁰ In general, see *St. Louis etc. R. Co. v. Terre Haute etc. R. Co.*, 33 Fed. 440; *Day v. Ft. Scott Inv. Co.*, 153 Ill. 293, 38 N. E. 567; *Blackman v. Wright*, 96 Iowa, 541, 65 N. W. 843; *Paine v. Harrison*, 38 Minn. 346, 37 N. W. 588; *Georgia Pac. R. Co. v. Brooks*, 66 Miss. 583, 6 South. 467; *Bostick v. Haynie* (Tenn.), 36 S. W. 856.

⁶¹ *Litchfield v. Browne*, 70 Fed. 141, 36 U. S. App. 130, 17 C. C. A. 28 (receipt of payment); *Hatch v. Ferguson*, 57 Fed. 972 (same); *Howle v. North Birmingham Land Co.*, 95 Ala. 389, 11 South. 15 (payment); *Bell v. Keepers*, 39 Kan. 105, 17 Pac. 785 (payment); *Dennis v. Jones*, 44 N. J. Eq. 513, 6 Am. St. Rep. 899, 14 Atl. 913 (payment).

⁶² *Shappirio v. Goldberg*, 192 U. S. 232, 24 Sup. Ct. 259 (no relief when purchaser collected rents after discovery of fraud); *Stuart v. Hayden*, 72 Fed. 402, 36 U. S. App. 462, 18 C. C. A. 618 (suing for damages for deceit); *Bement v. La Dow*, 66 Fed. 185; *Dent v. Long*, 90 Ala. 172, 7 South. 640; *Thiemann v. Heinze*, 120 Mo. 630, 25 S. W. 533; *Dennis v. Jones*, 44 N. J. Eq. 513, 6 Am. St. Rep. 899, 14 Atl. 913; *Temple Nat. Bank v. Warner* (Tex. Civ. App.), 31 S. W. 239.

⁶³ *McClelland v. McClelland*, 176 Ill. 83, 51 N. E. 559; *Tarkington v. Purvis*, 128 Ind. 182, 25 N. E. 879, 9 L. R. A. 607; *Allen v. Wilmington etc. R. Co.*, 106 N. C. 515, 11 S. E. 576, 820; *Knutson v. Bostrak*, 99 Wis. 469, 75 N. W. 156.

⁶⁴ For a discussion of the subject of laches in general, see *ante*, volume I, chapter I. See, also, *Russell v. Russell*, 129 Fed. 434; *Treadwell v. Torbert*, 122 Ala. 297, 25 South. 216; *Sears v. Hicklin*, 13 Colo. 143, 21 Pac. 1022; *New York Life Ins. Co. v. Weaver's Admr.*, 114 Ky. 295, 70 S. W. 628; *Boles v. Merrill*, 173 Mass. 491, 73 Am. St. Rep. 308, 53 N. E. 894; *Chase v. Chase*, 20 R. I. 202, 37 Atl. 804; *Du Pont*

Where the right to rescind arises out of undue influence, no ratification can be inferred and no laches can be imputed so long as the original undue influence remains.⁶⁵

§ 688. **Restoration of Consideration.**—In order to obtain relief, the complainant must restore the other party to the condition in which he stood before the transaction.⁶⁶

v. Du Bos, 52 S. C. 244, 29 S. E. 665; *Cottrell v. Watkins*, 89 Va. 801, 37 Am. St. Rep. 897, 17 S. E. 328, 19 L. R. A. 754. When the statute of limitations is applicable, it generally runs from the discovery of the fraud: *Chicago, T. & M. C. Ry. Co. v. Titterington*, 84 Tex. 218, 31 Am. St. Rep. 39, 19 S. W. 472.

⁶⁵ Pom. Eq. Jur., § 964, and cases cited. See, also, *Gowland v. De Faria*, 17 Ves. 20; *Thompson v. Thompson*, 132 Ind. 288, 31 N. E. 529.

⁶⁶ In general, see *Neblett v. Macfarland*, 92 U. S. 101, 23 L. ed. 471; *Grider v. American Freehold Land M. Co.*, 99 Ala. 281, 42 Am. St. Rep. 58, 12 South. 775; *Hanchey v. Southern Home B. & L. Assn.*, 140 Ala. 245, 37 South. 272; *Goodrich v. Lathrop*, 94 Cal. 56, 28 Am. St. Rep. 91, 29 Pac. 329; *Rubie Combination G. M. Co. v. Princess Alice G. M. Co.*, 31 Colo. 158, 71 Pac. 1121; *Bowden v. Achor*, 95 Ga. 243, 22 S. E. 254; *Eldredge v. Palmer*, 185 Ill. 618, 76 Am. St. Rep. 59, 57 N. E. 770; *Wenegar v. Bollenbach*, 180 Ill. 222, 54 N. E. 192; *Tarkington v. Purvis*, 128 Ind. 182, 25 N. E. 879, 9 L. R. A. 607; *Jackson v. Lynn*, 94 Iowa, 151, 58 Am. St. Rep. 386, 62 N. W. 704; *Halley v. Winchester Diamond Lodge*, 97 Ky. 438, 17 Ky. Law Rep. 293, 30 S. W. 999; *Thomas v. Beals*, 154 Mass. 51, 27 N. E. 1004; *Jandorf v. Patterson*, 90 Mich. 40, 51 N. W. 352; *Brown v. Norman*, 65 Miss. 369, 7 Am. St. Rep. 663, 4 South. 293; *Bell v. Campbell*, 123 Mo. 1, 45 Am. St. Rep. 505, 25 S. W. 359; *Pidcock v. Swift*, 51 N. J. Eq. 405, 27 Atl. 470; *Alexander v. Donohoe*, 143 N. Y. 203, 38 N. E. 263; *State v. Blize*, 37 Or. 404, 61 Pac. 735; *Du Pont v. Du Bos*, 52 S. C. 244, 29 S. E. 665; *Nalle v. Virginia Midland R. Co.*, 88 Va. 948, 14 S. E. 759; *Christian v. Vance*, 41 W. Va. 754, 24 S. E. 596; *Prickett v. Muck*, 74 Wis. 199, 42 N. W. 256. For a statement of the reasons for the rule, see Pom. Eq. Jur., § 910. See, also, *Neblett v. Macfarland*, 92 U. S. 101, 23 L. ed. 471, where the court said, per Hunt, J.: "The court proceeds on the principle that, as the transaction ought never to have taken place, the parties are to be placed as far as possible in the situation in which they would have stood if there had never been any such transaction."

As to restoration by an insane person, see 2 Pom. Eq. Jur., § 946; on cancellation of a usurious security, see 1 Pom. Eq. Jur., § 391; 2 Pom. Eq. Jur., § 937.

This requirement is based upon the maxim that he who seeks equity must do equity. In cases of fraud, if the defendant's act has prevented a complete restoration of the *status quo*, he cannot, in justice, urge this fact as a defense to the rescission;⁶⁷ but in other cases, such as mistake, it would seem reasonable that the *status quo* should be completely restored as a condition of equitable relief.⁶⁸ Even in an action at law, "if the thing received by the defrauded party be of no value, or if by reason of the act of the fraudulent party a return be rendered impossible, a return or tender is unnecessary."⁶⁹ So, also, where by natural causes or reasonable use the value of the property is diminished, and perhaps where it is necessarily destroyed in discovering the fraud, the fraudulent party must receive it in its depreciated condition."⁷⁰ Neither is a party obliged to return that

⁶⁷ See *Masson v. Bovet*, 1 Denio, 69, 43 Am. Dec. 651; *Hammond v. Pennock*, 61 N. Y. 145. See, also, *Brown v. Norman*, 65 Miss. 369, 7 Am. St. Rep. 663, 4 South. 293 (an important case); *Paquin v. Milliken*, 163 Mo. 79, 63 S. W. 417, 1092; *Coffee v. Ruffin*, 4 Cold. (Tenn.) 487.

⁶⁸ *Buckner v. Pacific etc. R. Co.*, 53 Ark. 16, 13 S. W. 332; *Stringer v. Keokuk etc. R. Co.*, 59 Iowa, 277, 13 N. W. 308; *Bedell v. Bedell*, 3 Hun, 580, 6 Thomp. & C. 324. But see *Goodrich v. Lathrop*, 94 Cal. 56, 28 Am. St. Rep. 91, 29 Pac. 321, where it was held sufficient, in rescission by a vendee for innocent mistake, for him to return the property in the condition in which he had received it, although its value had depreciated. In this case the plainest dictates of justice would seem to have required that the complainant should compensate the vendor to the extent of the depreciation in value.

⁶⁹ See cases cited in note 67, *ante*. See, also, *Freeman v. Reagan*, 26 Ark. 378; *Findlay v. Baltimore Trust & G. Co.*, 97 Md. 716, 55 Atl. 379; *Adams v. Reed*, 11 Utah, 480, 40 Pac. 720.

⁷⁰ *Brown v. Norman*, 65 Miss. 369, 7 Am. St. Rep. 663, 4 South. 293. See, also, *Neblett v. Macfarland*, 92 U. S. 101, 23 L. ed. 471; *Goodrich v. Lathrop*, 94 Cal. 56, 28 Am. St. Rep. 91, 29 Pac. 329 (mistake; see note 68, above, for criticism of this case); *Cohen v. Ellis*, 16 Abb. N. C. 320; *Bolton v. Prather* (Tex. Civ. App.), 80 S. W. 666. See, also, *Felt v. Bell*, 205 Ill. 213, 68 N. E. 794. "Nor, if the property is of a perishable nature, is the holder bound to

which he will be entitled to retain, even though cancellation be decreed.⁷¹

As to whether a return or tender of the consideration, whether money or other property, must be made before suit, the courts are very evenly divided. Many of the courts have, in dealing with this question, completely lost sight of the plain distinction between the equitable remedy of rescission or cancellation (where, as in all equity decrees, complete relief is awarded to the defendant as well as to the plaintiff), and the legal remedies, based upon rescission of a contract by the act of a party thereto,⁷² where, in the act of rescission itself, the plaintiff must restore or attempt to restore the consideration, since, in legal theory, the *ex parte* act of rescission reinvests him with the legal title to the thing for the possession of which he subsequently sues, and must, therefore, be conditioned upon a surrender of the

keep it in a state of preservation until the bill is filed. A party seeking to set aside a sale of shares is not bound to pay calls on them to prevent forfeiture after filing his bill; nor is it fatal to his right to rescission that some of the shares have been thus perfected': *Neblett v. Macfarland*, 92 U. S. 101, 23 L. ed. 471.

⁷¹ *Winter v. Kansas City Cable Co.*, 160 Mo. 159, 61 S. W. 606 (suit to set aside settlement of a claim); *Kley v. Healy*, 127 N. Y. 555, 28 N. E. 593 (suit to cancel release); *Hollenback v. Shoyer*, 16 Wis. 499 (suit to set aside discharge of mortgage). And the complainant need not tender the purchase price received by him when, if he is successful in the suit, the defendant will be required to account for profits far in excess of such price: *Billings v. Aspen M. & S. Co.*, 51 Fed. 338, 10 U. S. App. 1, 2 C. C. A. 252.

⁷² "A court of equity entertains a suit for the express purpose of procuring a contract or conveyance to be canceled, and renders a decree conferring in terms that exact relief. A court of law entertains an action for the recovery of the possession of chattels, or, under some circumstances, for the recovery of land, or for the recovery of damages, and . . . the legal judgment proceeds upon the assumption that one of the parties had himself rescinded the contract or conveyance prior to the suit, and that he was justified in doing so": 1 Pom. Eq. Jur., § 110, and note 1. The distinction is very fully and clearly explained in *Brown v. Norman*, 65 Miss. 369, 7 Am. St. Rep. 663, 4 South. 293.

thing already received by him in pursuance of the transaction which he thus avoids. Restoration or tender before suit is thus a necessary element in legal rescission, but is wholly superfluous as a prerequisite to the commencement of a suit in equity for rescission or cancellation; and insistence upon it as such prerequisite often works a complete denial of justice.⁷³ In nearly half the states, however, where the question has arisen, it has been settled that the legal requisite of tender applies in full force to the equitable remedy of rescission or cancellation,⁷⁴ except in the few circumstances mentioned above, where return of the consideration is impossible and is excused.⁷⁵

⁷³ Where, for example, the complainant has spent the money consideration received by him before discovery of the fraud. As correctly holding that a tender or offer of restoration before suit is not necessary, see *Barker v. Walters*, 8 Beav. 92; *Jervis v. Berridge*, L. R. 8 Ch. 351; *Thackrah v. Haas*, 119 U. S. 499, 7 Sup. Ct. 311, 30 L. ed. 486; *Wenegar v. Bollenbach*, 180 Ill. 222, 54 N. E. 192 (but see *Rigdon v. Walcott*, 141 Ill. 649, 31 N. E. 158); *McCorkell v. Karhoff*, 90 Iowa, 545, 58 N. W. 813; *Thayer v. Knote*, 59 Kan. 181, 52 Pac. 433 (but see *State v. Williams*, 39 Kan. 517, 18 Pac. 727); *Thomas v. Beals*, 154 Mass. 51, 27 N. E. 1004; *Jandorf v. Patterson*, 90 Mich. 40, 51 N. W. 352; *Carlton v. Hulett*, 49 Minn. 308, 51 N. W. 1053; *Berry v. American Cent. Ins. Co.*, 132 N. Y. 49, 28 Am. St. Rep. 548, 30 N. E. 254; *Wells v. Houston*, 23 Tex. Civ. App. 629, 57 S. W. 584; *O'Dell v. Burnham*, 61 Wis. 562, 21 N. W. 635; *Hansen v. Allen*, 117 Wis. 61, 93 N. W. 805. In a few cases it is also held that the complainant need not offer in his bill to do equity, since such offer is superfluous: *Knappen v. Freeman*, 47 Minn. 491, 50 N. W. 533.

⁷⁴ *Reeves v. Corning*, 51 Fed. 774; *Alaska & Chicago C. Co. v. Solner*, 123 Fed. 855, 59 C. C. A. 662; *Buena Vista Fruit etc. Co. v. Tuohy*, 107 Cal. 243, 40 Pac. 386; *Godding v. Decker*, 3 Colo. App. 198, 32 Pac. 832; *Bowden v. Achor*, 95 Ga. 243, 22 S. E. 254; *Burgett v. Teal*, 91 Ind. 260; *Harkness v. Cleaves*, 113 Iowa, 140, 84 N. W. 1033. For additional cases, see 6 Cyc. 312, 313. Though the requisite of tender before suit is established by a long series of cases in Indiana, it is there held that it is not necessary to comply with all the formalities of a legal tender: *Tarkington v. Purvis*, 128 Ind. 182, 25 N. E. 879, 9 L. R. A. 607.

⁷⁵ See above, notes 69 and 70.

CHAPTER XXXIII.

ASSIGNMENT OF DOWER; AND ESTABLISHMENT
OF DISPUTED BOUNDARIES.

ANALYSIS.

- §§ 689-693. Assignment of dower.
 - § 689. Legal remedies.
 - § 690. Origin and grounds of the equitable jurisdiction.
 - § 691. The jurisdiction now concurrent.
 - § 692. Advantages of the equitable procedure.
 - § 693. Exclusive jurisdiction over dower in equitable estates.
- §§ 694-700. Establishment of disputed boundaries.
 - § 694. In general.
 - § 695. Grounds for relief—Fraud.
 - § 696. Same—Multiplicity of suits.
 - § 697. Same—Relationship between parties.
 - § 698. Same—Miscellaneous.
 - § 699. Requisites of bill.
 - § 700. Nature of relief.

§ 689. Assignment of Dower—Legal Remedies.—“The right known as the wife’s right of dower was purely legal, and was asserted at law through the writ of right of dower, and the writ of dower *unde nihil habet*, both of which were in the nature of real actions. As early as the reign of Queen Elizabeth, courts of equity began to assume jurisdiction over cases of dower, but only tentatively, and as ancillary to proceedings at law.¹ This jurisdiction, originally narrow and auxiliary, has, by the course of decision, and on familiar equitable principles, been expanded to the extent of affording complete relief between the parties.”²

¹ Wild v. Wells, 1 Dick. 3; Toth, 82.

² Pom. Eq. Jur., § 1380.

§ 690. Origin and Grounds of the Equitable Jurisdiction.—

“Equitable interposition in cases of dower was at first invoked for the removal of impediments in the way of recovery at law. As the title deeds to real estate were held by heirs, devisees, or trustees, it would be important, and even necessary, for the widow, on the event of a contest of her dower, to resort to equity, for the purpose of ascertaining the lands of which her husband had been seised during marriage. To accomplish this purpose, a bill of discovery would be entertained in equity; and where the land of the husband was an undivided interest in a greater portion, equity would decree a partition in aid of the assignment to the widow of her dower.³ This jurisdiction was, in its earlier stages, strictly auxiliary; and if no obstacle in the way of recognition and assignment of dower at law was disclosed, the equitable proceedings would be arrested.⁴ The equitable jurisdiction, having once attached, was not slow in maturing so as to confer full relief. When the widow came into equity for a discovery respecting the title deeds to her husband’s estate, which were in the hands of the heir, it was held that she should have complete relief.⁵ If her title to dower was denied, it would be incumbent upon her to establish such title at law. Equity would, for that purpose, retain the bill for a reasonable time, and upon the determination of the issue at law in the widow’s favor, would proceed to administer final relief.”⁶

³ *Moor v. Black*, Cas. t. Talb. 126.

⁴ *Shute v. Shute*, Prec. Ch. 111.

⁵ *Curtis v. Curtis*, 2 Brown Ch. 620, 631, 632.

⁶ Pom. Eq. Jur., § 1381; *Curtis v. Curtis*, 2 Brown Ch. 620; *Mundy v. Mundy*, 2 Ves. 122, 128; *Hartshorne v. Hartshorne*, 2 N. J. Eq. 349; *Rockwell v. Morgan*, 13 N. J. Eq. 384; *Ocean Beach Assn. v. Brinley*, 34 N. J. Eq. 438; *Swaine v. Perine*, 5 Johns. Ch. 482, 9 Am. Dec. 318. And assuming the widow’s title to be established or con-

§ 691. **The Jurisdiction Now Concurrent.**—"Although it was thus, at one time, supposed that the jurisdiction of equity was ancillary, and could not attach in the absence of impediments at law, it is now well settled that courts of equity have concurrent jurisdiction in cases of legal dower, or dower in legal estates."⁷ When "the seisin of the husband and the title of the wife are admitted by the answer, the court will proceed at once to assign dower, and to take an account of the mesne profits since the death of the husband, if it is a case in which the widow would be entitled to damages at law."⁸ Where, however, the title is denied, the court will retain the bill, and direct a suit to try the title, and will then give her possession and decree such other relief as she may be entitled to on the right thus established.⁹

§ 692. **Advantages of the Equitable Procedure.**—"The advantages of the equitable procedure are obvious. An

ceeded, equity will not only assist her by way of discovery and assignment, but will decree her a due share of the mesne profits, and this, not from the time of the demand merely, but from the time when her title accrued: Pom. Eq. Jur., § 1381, note; *Dormer v. Fortescue*, 3 Atk. 124, 130 (*dictum*); *Chase's Case*, 1 Bland, 206, 17 Am. Dec. 277; *Hazen v. Thurber*, 4 Johns. Ch. 604; *Keith v. Trapier*, Bail. Eq. 63; *Phinney v. Johnson*, 15 S. C. 158.

⁷ Pom. Eq. Jur., § 1382. "In a leading case the question was presented on the pleadings, which failed to disclose any impediment in the way of a proceeding at law, but the court determined in favor of the jurisdiction: *Mundy v. Mundy*, 2 Ves. 122": Pom. Eq. Jur., § 1382, note. See, in general, *Herbert v. Wren*, 7 Cranch, 370, 3 L. ed. 374; *Thomas v. Thomas*, 73 Iowa, 657, 35 N. W. 693; *Beeman v. Kitzman*, 124 Iowa, 86, 99 N. W. 171; *Hartshorne v. Hartshorne*, 2 N. J. Eq. 349; *Badgley v. Bruce*, 4 Paige, 98; *Swaine v. Perine*, 5 Johns. Ch. 482, 9 Am. Dec. 318. See, also, *Bishop v. Woodward*, 103 Ga. 281, 29 S. E. 968.

⁸ *Badgley v. Bruce*, 4 Paige, 98. See, also, *Mundy v. Mundy*, 2 Ves. 122.

⁹ *Mundy v. Mundy*, 2 Ves. 122; *Hartshorne v. Hartshorne*, 2 N. J. Eq. 349; *Badgley v. Bruce*, 4 Paige, 98.

outstanding term could be removed and satisfied;¹⁰ a partition in the case of undivided interests could be decreed, and an account could be taken;¹¹ fraudulent conveyances could be canceled;¹² and antagonistic claims to the subject-matter could be determined without multiplicity of suits. Equity will also award damages which could not be recovered at law on an application for dower. At law, if the tenant dies after judgment, and before assessment of damages, the damages are lost to the widow; and if she herself dies before such assessment of damages, her personal representatives are without recourse. In these instances, the widow, or her personal representatives, by a resort to equity, obtain adequate relief."¹³

§ 693. **Exclusive Jurisdiction Over Dower in Equitable Estates.**—"In England since the statute of 3 and 4 William IV.,¹⁴ and in the United States from an early day, equity has assumed an exclusive jurisdiction over claims for dower in equitable estates. Where the husband's estate was an equity of redemption, the widow may proceed against the mortgagee by a bill in equity to redeem."¹⁵ The right of a widow who has joined in a mortgage to redeem therefrom exists until it has been cut off by a strict foreclosure or until the expiration of the statutory time for redemption after a foreclosure by judicial

¹⁰ *Dormer v. Fortescue*, 3 Atk. 124, 130.

¹¹ *Herbert v. Wren*, 7 Cranch, 370, 3 L. ed. 374; *Hill v. Gregory*, 56 Miss. 341.

¹² *Jones v. Van Doren*, 130 U. S. 684, 9 Sup. Ct. 685, 32 L. ed. 1077; *Swaine v. Perine*, 5 Johns. Ch. 482, 9 Am. Dec. 318.

¹³ *Pom. Eq. Jur.*, § 1382. See *Curtis v. Curtis*, 2 Brown Ch. 620, 632; *Jones v. Jones*, 71 Wis. 514, 38 N. W. 88.

¹⁴ Chapter 105.

¹⁵ *Pom. Eq. Jur.*, § 1383. See *McMahan v. Kimball*, 3 Blackf. 1; *Gibson v. Crehore*, 3 Pick. 475; *Farwell v. Cotting*, 8 Allen, 211; *Chiswell v. Morris*, 14 N. J. Eq. 101; *Eldridge v. Eldridge*, 14 N. J. Eq. 195; *Denton v. Nanny*, 8 Barb. 618.

Equitable Remedies, Vol. II—74

sale.¹⁶ It is merely a right to redeem.¹⁷ "Where the husband's estate was a portion of the assets of a partnership, and where the settlement of the partnership affairs has been unconscionably protracted, the widow may appeal to equity for relief.¹⁸ If the husband should die seised of land on which a part of the purchase-money was due, the widow may resort to equity for a sale of the land in satisfaction of the unpaid balance, and for her dower in the surplus.¹⁹ On the conversion of the husband's estate into money, equity will award to the widow her proportionate share.²⁰ And where the husband has sought, by fraudulent conveyances, to defeat the wife's dower, equity will, on her application, grant appropriate relief.²¹ The widow's right of dower,

16 *Farwell v. Cotting*, 8 Allen, 211.

17 "Against the mortgagee or his assignee her right is only in equity, and it is only by a bill in equity, and paying her due proportion of the debt, that she can avail herself of her right; and without doubt the executors and administrators, if there be personal estate whereby the debt may be discharged, may be compelled to contribute their just proportion in order to liberate the estate for the heirs, or for the creditors, if it should be for their interest to have the estate redeemed, and to enable the widow to have her dower": *Gibson v. Crehore*, 3 Pick. 475. See, also, *Chiswell v. Morris*, 14 N. J. Eq. 101 ("But in equity she may redeem *pro tanto*, and may thus recover her dower upon the payment of such portion of the encumbrance, or subject to such deduction on account of the encumbrance as is equitable and just"). To the effect that she must pay the entire debt, see *McMahan v. Kimball*, 3 Blackf. 1.

18 *Goodburn v. Stevens*, 1 Md. Ch. 420.

19 The widow "cannot have dower assigned to her without paying the money so secured. . . . But she is entitled to dower upon this being done, and, if it be not done, she is entitled to have the land sold for the payment of the debt, and to be endowed of one-third of the money arising from such sale after the payment of the debt": *Thompson v. Cochran*, 7 Humph. 72, 46 Am. Dec. 68. See, also, *Daniel v. Leitch*, 13 Gratt. 195.

20 *Higbie v. Westlake*, 14 N. Y. 281.

21 *Bear v. Stahl*, 61 Mich. 203, 28 N. W. 69; *Davis v. Davis*, 5 Mo. 183; *Rice v. Waddell*, 168 Mo. 99, 67 S. W. 605 (conveyance in fraud of statutory dower right); *Swaine v. Perine*, 5 Johns. Ch. 482, 9 Am.

while yet unmeasured and unassigned, may be transferred by her, or reached by her judgment creditors, and her voluntary transferee, or the receiver appointed in aid of the judgment creditor, may maintain a suit in equity to have the dower assigned to him.²² The assignment of dower is usually effected by a reference to a master and a commission, and the share is set out by metes and bounds. Where an account is needed, it may be taken by means of a similar reference. In many of our states summary proceedings have been provided by statute for the assignment of dower, especially where the widow's right thereto is not contested."²³

§ 694. Establishment of Disputed Boundaries—In General.

"Where the boundaries between two adjacent parcels of

Dec. 318; *Tate v. Tate*, 1 Dev. & B. Eq. 22; *London v. London*, 1 Humph. 1; *Jones v. Jones*, 71 Wis. 514, 38 N. W. 88. See, also, *Manikee v. Beard*, 85 Ky. 20, 2 S. W. 545 (gift of personalty in fraud of wife's statutory right). It has been held that the wife may obtain relief by having the conveyance set aside during the lifetime of her husband: *Petty v. Petty*, 4 B. Mon. 215, 39 Am. Dec. 501. As to what conveyances by the husband are not fraudulent, see *Hamilton v. Smith*, 57 Iowa, 15, 42 Am. Rep. 39, 10 N. W. 276; *Fennessey v. Fennessey*, 84 Ky. 519, 4 Am. St. Rep. 210, 2 S. W. 158. As to the defense of a *bona fide* purchase for value without notice, against the widow suing in equity for her dower, see 2 Pom. Eq. Jur., § 765; *Blain v. Harrison*, 11 Ill. 384. To the effect that it is not a defense: *Ridgeway v. Newbold*, 1 Harr. (Del.) 385; *Campbell v. Murphy*, 2 Jones Eq. 357; *Larrowe v. Beam*, 10 Ohio, 498.

22 *Strong v. Clem*, 12 Ind. 37, 74 Am. Dec. 200 (may be enforced by transferee); *McMahon v. Gray*, 150 Mass. 289, 15 Am. St. Rep. 202, 22 N. E. 923, 5 L. R. A. 748 (may be reached by creditors' bill); *McKenzie v. Donald*, 61 Miss. 452 (right is assignable); *Payne v. Becker*, 87 N. Y. 153 (suit to admeasure dower may be brought by receiver to whom right assigned); *Tompkins v. Fonda*, 4 Paige, 448 (may be reached by creditors' bill); *Stewart v. McMartin*, 5 Barb. 438 (same); *Pope v. Mead*, 99 N. Y. 201, 1 N. E. 671 (right is assignable); *Boltz v. Stoltz*, 41 Ohio St. 540 (may be reached by creditors' bill). But see *Maxon v. Nancy*, 14 R. L. 641, holding that right cannot be reached by creditors' bill.

23 Pom. Eq. Jur., § 1383.

land, even when held by their respective owners under purely legal titles, have become confused or obscure, equity has, from an early period, exercised a jurisdiction to settle them.²⁴ Whether this jurisdiction originated in the consent of the parties, and proceeded by analogy to the writs *de rationalibus divisis* and *de perambulatione facienda* used at law,²⁵ or arose in avoidance of a multiplicity of suits,²⁶ has been discussed; but the determination of the question remains uncertain and conjectural. The mere fact, however, that certain boundaries are in controversy is not of itself sufficient to authorize the interference of equity; and upon such a showing, the parties would be left to their rights and remedies at law. Courts of equity will not interpose to ascertain boundaries, unless, in addition to a naked confusion of the controverted boundaries, there is suggested some peculiar equity, which has arisen from the

²⁴ *Wake v. Conyers*, 1 Eden, 331, 2 Lead. Cas. Eq., 4th Am. ed. 850, 853, 860; *Mullineux v. Mullineux*, Toth. 39; *Pickering v. Kimp-ton*, Toth. 39; *Boteler v. Spelman*, Finch, 96; *Perry v. Pratt*, 31 Conn. 433.

²⁵ "There are two writs in the register concerning the adjustment of controverted boundaries, from one of which it is probable that the exercise of this jurisdiction by the Court of Chancery took its commencement. The first is the writ *de rationalibus divisis*. The other writ the *de perambulatione facienda*. Both Lord Northington and Lord Thurlow, without referring to this writ or commission as the origin of the jurisdiction of the Court, have yet expressed an opinion, that consent was the ground on which it had been at first exercised. The next step would probably be to grant the commission on the application of one party who showed an equitable ground for obtaining it; such as, that a tenant or copyholder had destroyed, or not preserved, the boundaries between his own property and that of his lessor or lord. And, to its exercise on such an equitable ground, no objection has ever been made": *Speer v. Crawter*, 2 Mer. 410, 417.

²⁶ *Wake v. Conyers*, 1 Eden, 331, 2 Lead. Cas. Eq., 4th Am. ed., 850, 853, 860.

conduct, situation, or relations of the parties.”²⁷ It has been held that equity will not take jurisdiction merely because the dispute is as to the boundary line be-

27 Pom. Eq. Jur., § 1384. “All the cases where the court has entertained bills for establishing boundaries, have been where the soil itself was in question, or where there might have been a multiplicity of suits. This court has, in my opinion . . . no power to fix the boundaries of legal estates, unless some equity is superinduced by the act of the parties, as some particular circumstance of fraud; or confusion, where one party has ploughed too near the other, or the like”: *Wake v. Conyers*, 1 Eden, 331, 2 Lead Cas. Eq., 4th Am. ed., 850. See, also, *Miller v. Warmington*, 1 Jacob & W. 484; *Speer v. Crawter*, 2 Mer. 410; *Ashurst v. McKenzie*, 92 Ala. 484, 9 South. 262 (citing Pom. Eq. Jur., §§ 1384, 1385); *Wetherbee v. Dunn*, 36 Cal. 249; *Perry v. Pratt*, 31 Conn. 433; *Wolcott v. Robbins*, 26 Conn. 236; *Doggett v. Hart*, 5 Fla. 215, 58 Am. Dec. 464; *Pendry v. Wright*, 20 Fla. 828; *Fraley v. Peters*, 12 Bush, 469; *Scott v. Means*, 80 Ky. 460; *Walker v. Leslie*, 90 Ky. 642, 14 S. W. 682; *Wykes v. Ringleberg*, 49 Mich. 567, 14 N. W. 498; *Wilson v. Hart*, 98 Mo. 618, 12 S. W. 249 (quoting a portion of Pom. Eq. Jur., § 1384); *Humboldt County v. Lander County*, 22 Nev. 248, 58 Am. St. Rep. 750, 38 Pac. 578, 26 L. R. A. 749 (citing Pom. Eq. Jur., § 1384); *De Veney v. Gallagher*, 20 N. J. Eq. 33; *Wolfe v. Scarborough*, 2 Ohio St. 361; *King v. Brigham*, 23 Or. 262, 31 Pac. 601, 18 L. R. A. 361 (*dictum*, citing Pom. Eq. Jur., §§ 1384, 1385); *Love v. Morrill*, 19 Or. 545, 24 Pac. 916 (*dictum*, citing Pom. Eq. Jur., §§ 1384, 1385); *Norris' Appeal*, 64 Pa. St. 275; *Tillmes v. Marsh*, 67 Pa. St. 507; *McCreery Land & Inv. Co. v. Myers* (S. C.), 49 S. E. 848 (code provides adequate remedy for most cases); *Hale v. Darter*, 5 Humph. 79; *Topp v. Williams*, 7 Humph. 569; *Nye v. Hawkins*, 65 Tex. 600 (citing Pom. Eq. Jur., § 1384); *Collins v. Sutton* (Va.), 26 S. E. 415 (citing Pom. Eq. Jur., § 1384); *Robinson v. Moses* (Va.), 34 S. E. 48; *Stuart's Heirs v. Coalter*, 4 Rand. 74, 15 Am. Dec. 731; *Hill v. Proctor*, 10 W. Va. 59; *Cresap v. Kemble*, 26 W. Va. 603; *Burns v. Mearns*, 44 W. Va. 744, 30 S. E. 112. To the effect that equity has no jurisdiction merely because the boundaries are disputed and difficult of ascertainment, see *Bresler v. Pitts*, 58 Mich. 347, 25 N. W. 311.

The jurisdiction has been extended by statute in some jurisdictions, so that relief may be granted in the absence of any peculiar equity: *Perry v. Pratt*, 31 Conn. 433. Under the statute in Oregon, “the jurisdiction of equity is extended to a class of cases of disputed boundary, where no equitable circumstance attaches itself to the controversy. Under it, a court of equity may intervene in any case in which title is not involved, where the boundary is confused

tween two counties; the same principles govern as in the case of private boundaries.²⁸

§ 695. **Grounds for Relief—Fraud.**—Fraud of the party against whom relief is sought by way of establishment of boundaries affords a sufficient ground for equitable interference.²⁹ Thus, where a party tears up a dam, fills up a mill-race and plows it over, so as to efface the boundary, against the remonstrance of the other party, equity will grant relief by issuing a commission to re-

er obscure, and a controversy exists between the owners of the adjacent lands to ascertain such boundary and fix its location. It is of no consequence, to sustain such jurisdiction, that the confusion of the boundary about which the controversy exists was not occasioned by the fraud or misconduct of the defendant, but was the result of accident or lapse of time, or was produced by natural causes, or the like”: *King v. Brigham*, 23 Or. 262, 31 Pac. 601, 18 L. R. A. 361. But the statute limits the jurisdiction to the ascertainment of the boundary. The equity court cannot try the title: *School District No. 70 v. Price*, 23 Or. 294, 31 Pac. 657; *Miner v. Caples*, 23 Or. 303, 31 Pac. 655; *Love v. Morrill*, 19 Or. 545, 24 Pac. 916; *Dice v. McCauley*, 22 Or. 456, 30 Pac. 160.

For a good statement as to what amounts to a confusion of boundaries, see *Boyd v. Dowie*, 65 Barb. 237: “A confusion of boundaries exists when by the deeds thereof, or the acts of the owners or occupants of the same, the boundaries cannot be ascertained with reasonable certainty by one party alone, or except by the judgment or opinions of men, after an examination of the deeds and the premises with a surveyor, aided perhaps by the examination of witnesses.”

²⁸ *Humboldt County v. Lander County*, 22 Nev. 248, 58 Am. St. Rep. 750, 38 Pac. 578, 26 L. R. A. 749, citing *Pom. Eq. Jur.*, § 1384.

²⁹ *Pom. Eq. Jur.*, § 1385. Most of the cases are mere *dicta* on this point, but there is an entire harmony. See *Speer v. Crawter*, 2 Mer. 410; *Ashurst v. McKenzie*, 92 Ala. 484, 9 South. 262 (citing *Pom. Eq. Jur.*, §§ 1384, 1385); *Perry v. Pratt*, 31 Conn. 433; *Fraley v. Peters*, 12 Bush, 469; *Hill v. Proctor*, 10 W. Va. 59. For a case squarely in point, see *Guice v. Barr*, 130 Ala. 570, 30 South. 563, citing *Pom. Eq. Jur.*, §§ 1384, 1385 (“The gradual encroachment upon the lands of complainant by defendant by moving the fence which marked the line between them, and thus obliterating the boundary, entitled, if proven, the complainant to a commission, and therefore to the exercise of the power of a court of equity”).

mark the site of the race. An account for loss of profits will also be decreed.³⁰ But where the boundaries are defined upon the minutes of the United States Land Office, and cannot be affected by the alleged fraudulent conduct of the other party, relief will be denied.³¹

§ 696. **Same—Multiplicity of Suits.**—Where a settlement of the boundaries in dispute cannot be had at law without a multiplicity of suits, relief may be obtained in equity.³² Thus, where it would be necessary to bring a great number of actions against different parties in order to fix the boundaries and establish plaintiff's right, relief may be awarded.³³ Where, however, the issues in the different cases are distinct, equity will not interfere, and will leave the parties to their remedies at law.³⁴

§ 697. **Same — Relationship Between Parties.**—Where there is such a relation between the parties as to make it incumbent upon one of them to preserve the boundaries, and a confusion occurs, equity will relieve. Thus, a tenant contracts, among other obligations resulting from the relation of landlord and tenant, to keep his property distinct from his landlord's; and if he fails to do so, a commission to ascertain the boundary may issue.³⁵ A copyholder in England is under the same ob-

³⁰ *Merriman v. Russell*, 2 Jones Eq. 470.

³¹ *Pendry v. Wright*, 20 Fla. 828.

³² Pom. Eq. Jur., § 1385; *Wake v. Conyers*, 1 Eden, 331, 2 Lead. Cas. Eq., 4th Am. ed., 850; *De Veney v. Gallagher*, 20 N. J. Eq. 33; *Boyd v. Dowie*, 65 Barb. 237.

³³ *Marquis of Bute v. Glamorganshire Canal Co.*, 1 Phill. Ch. 681; *Beatty v. Dixon*, 56 Cal. 622 (nineteen defendants).

³⁴ *Bouverie v. Prentice*, 1 Brown Ch. 200.

³⁵ Pom. Eq. Jur., § 1385; *Attorney-General v. Fullerton*, 2 Ves. & B. 263; *Aston v. Lord Exeter*, 6 Ves. 288 ("Certainly it is a duty upon a tenant to keep the boundaries; and this court will aid the reversioner to distinguish them; and will even give him as much

ligation.³⁶ Relief is given not only against the party guilty of the neglect, but also against all those who claim under him, either as volunteers or as purchasers with notice.³⁷

§ 698. Same—Miscellaneous.—“In the case of a rent-charge, where, by reason of a confusion of the boundaries, the remedy of distress is defeated, a court of equity will issue a commission to fix the boundaries.³⁸ Where several parcels of land allotted to the holders of certain offices were for a number of years in the possession of a single occupant, who held all the offices, it would seem that a confusion of boundaries resulting from such holding would furnish a sufficient ground for the equitable relief.”³⁹

§ 699. Requisites of Bill.—A bill seeking the establishment of a boundary must show clearly that without the assistance of the court the boundaries cannot be found.⁴⁰

land, if they cannot be distinguished”); *Speer v. Crawter*, 17 Ves. 216; *Godfrey v. Littel*, 1 Russ. & M. 59, 2 Russ. & M. 630; *Attorney-General v. Stephens*, 6 De Gex, M. & G. 111, 133. But the circumstance of tenancy gives no jurisdiction when the confusion arose prior to its beginning: *Miller v. Warmington*, 1 Jacob & W. 484. For a general statement of the duty to maintain boundaries as a ground for relief, see *Ashurst v. McKenzie*, 92 Ala. 484, 9 South. 262.

³⁶ *Duke of Leeds v. Earl of Strafford*, 4 Ves. 180; *Clayton v. Cookes*, 2 Atk. 449.

³⁷ *Attorney-General v. Stephens*, 6 De Gex, M. & G. 111.

³⁸ *Boreman v. Yeat*, cited 1 Ch. Cas. 145; *Duke of Leeds v. Powell*, 1 Ves. Sr. 171. See, also, *North v. Earl of Strafford*, 3 P. Wms. 148.

³⁹ Pom. Eq. Jur., § 1385; *Kennedy v. Trott*, 6 Moore, P. C. C. 449, 467.

⁴⁰ *Miller v. Warmington*, 1 Jacob & W. 484 (“the bill states, that there are no marks and bounds to distinguish one part from the other; and though there may be none that are visible and apparent to the eye, yet it does not follow that, by addressing themselves to old people acquainted with the place, or by examining the tenant,

It is the duty of the parties to use the means at hand for settling the question before resorting to equity. The plaintiff must establish a clear legal title to some land in the possession of the defendant. Possession of at least some portion in the defendant is essential.⁴¹ All parties interested, whether their estates are present or future, remainder-men and reversioners, should be made parties to the bill.⁴²

§ 700. **Nature of Relief.**—When a ground for relief appears, the court will, by commission, ascertain the boundaries, if practicable. If, however, this is not practicable, the court may do justice between the parties by assigning reasonable boundaries, or by setting out lands of equal value.⁴³ In some cases an account

they might not separate the two parts. The Court would expect this to be clearly established before it would interfere"). In *Nye v. Hawkins*, 65 Tex. 600, it was said: "When a plaintiff is able to aver the true locality of a boundary line and that the natural objects, called for in a deed to fix its true locality, still exist, and does so aver, he then shows a case, in which, within the meaning of the law, no confusion of boundary can exist."

⁴¹ *Pom. Eq. Jur.*, § 1385; *Godfrey v. Littel*, 1 Russ. & M. 59, 2 Russ. & M. 630; *Attorney-General v. Stephens*, 6 De Gex, M. & G. 111 (possession must be shown); *Nye v. Hawkins*, 65 Tex. 600; *Ashurst v. McKenzie*, 92 Ala. 484, 9 South. 262.

⁴² *Rayley v. Best*, 1 Russ. & M. 659 (all parties interested are proper parties).

⁴³ *Hill v. Proctor*, 10 W. Va. 59; *Attorney-General v. Fullerton*, 2 Ves. & B. 263; *Ashurst v. McKenzie*, 92 Ala. 484, 9 South. 262 (citing *Pom. Eq. Jur.*, § 1385). The decree in *Duke of Leeds v. Earl of Strafford*, 4 Ves. 180, illustrates the nature of the relief. "Direct a Commission to issue . . . ; and let the Commissioners distinguish, which of the said copyhold lands are compounded, and which are uncompounded, and distinguish the above copyhold lands from the freehold lands of the Defendant within the said manor; and ascertain the boundaries thereof; and the Commissioners are to set out, distinguish, divide, and ascertain, the same by metes and bounds accordingly; and if by reason of the confusion of boundaries, or alteration of names, or any other circumstances, the said Commissioners shall not be able to distinguish or ascertain the particular copyholds

for loss of profits may be decreed as incidental to the other relief.⁴⁴

or any of them, in that case they are to set out such a quantity of lands now in the possession of the Defendant the Earl of Strafford within the said manor, as may be of equal value with the said copyhold lands, or so much thereof as cannot be distinguished or ascertained as aforesaid."

⁴⁴ Merriman v. Russell, 2 Jones Eq. 470.

CHAPTER XXXIV.

PARTITION.

ANALYSIS.

- § 701. Partition—In general.
- § 702. Common-law remedy.
- § 703. Equitable jurisdiction.
- § 704. Property subject to partition—In general.
- § 705. Personal property.
- § 706. Future estates.
- § 707. Incorporeal and other property.
- § 708. Limitations on the right to partition.
- § 709. Who is entitled to partition.
- § 710. Effect of disseisin.
- § 711. Disseisin—Rule in equity.
- § 712. Disputed title.
- § 713. Parties defendant.
- § 714. Persons under disability.
- § 715. Holders of particular estates and interests.
- § 716. Estates of persons not in being.
- § 717. Incidental relief in equity—In general.
- § 718. Owelty of partition.
- § 719. Improvements.
- § 720. Accounting.
- § 721. Mode of partition.
- § 722. Partition by means of sale.

§ 701. **Partition—In General.**—In its original and technical meaning, partition signified the division by coparceners or co-heirs among themselves of lands which had descended by common law or by custom. Its later signification included the division of lands, tenements and hereditaments by joint tenants and tenants in common. The term has now come to mean the division or allotment made among several persons of real or personal property belonging to them as co-owners. Partition may be either voluntary, by agreement of the par-

ties acting directly or through arbitrators, or compulsory, by means of judicial proceedings. While originally only courts of law recognized the right to partition, courts of equity very early assumed a concurrent jurisdiction. Under modern modified statutory procedure the right is generally enforced by a special action in courts having both legal and equitable jurisdiction.

§ 702. **Common-law Remedy.**—When an inheritance descended to more than one heir, and they could come to no agreement among themselves concerning the division, a proceeding might be instituted by a writ of partition, in which a division would be made and each heir be put in possession of a certain portion in severalty. “At common law, the writ of partition lay only in case of lands held in co-parcenary.”¹ Its use was confined solely to co-parceners or to one co-parcener against a third person claiming title from a co-parcener.² The remedy was afterwards extended by statute to joint tenancies and tenancies in common, and included not only estates of inheritance, but also estates for life or for years and estates in which some of the co-tenants held for life or years and others held estates of inheritance.³ Where

1 “The reason given was, that as tenancy in co-parcenary arose by operation of law, it was only proper that the law should afford the means of relief, but as the relationship of joint tenants and tenants in common was one voluntarily assumed, it must continue until the parties themselves terminated it”: 4 Pom. Eq. Jur., § 1386, and note 1.

For the matters added, in this chapter, to the text and notes of Pom. Eq. Jur. (2d ed.), §§ 1386-1390, the author is indebted to the able assistance of Prof. Eugene A. Gilmore of the University of Wisconsin Law Department.

2 Roscoe, Real Actions, 131; 2 Bl. Com. 185; Co. Litt. 175a; Baring v. Nash, 1 Ves. & B. 555; Miller v. Warmington, 1 Jacob & W. 493; Coleman v. Coleman, 19 Pa. (7 Harris) 100, 57 Am. Dec. 641.

3 31 Hen. VIII., c. 1; 32 Hen. VIII., c. 32; Com. Dig., tit. *Parcener*; 2 Bl. Com. 187; 4 Pom. Eq. Jur., § 1386, note 2.

the tenure was copyhold, partition might be had in the lord's court by a plaint in the nature of a writ of partition. This plaint and writ were abolished by statute⁴ and there was no remedy, even in equity,⁵ for the partition of copyhold estates until jurisdiction was conferred upon the chancery courts by statute.⁶ "The operation of the common-law remedy, even after its extension to joint tenancies and tenancies in common, was imperfect and narrow. The writ of partition lay only against the tenant in possession, and was incompetent to reach the remainder-man or the reversioner. As the judgment at law proceeded according to the titles proved, it was necessary for the plaintiff to show the title of the defendant as well as his own. And as partition at law was made by the sheriff by actual division, it might happen that, where the undivided interests were incapable of exact apportionment, the judgment of the court would be powerless to compensate the inequalities."⁷ Moreover, a court of law was unable to adjust the often complicated rights of the parties, as where one co-tenant had laid out large sums for improvements, or had erected valuable buildings, or had been in receipt of all the rents and profits. A court of law could not order a sale, but could only make an actual partition, although this might often work a great hardship or even result in a virtual destruction of the property.

§ 703. Equitable Jurisdiction.—The origin of the jurisdiction of the courts of chancery in cases of partition, while assumed to be very ancient, has never been satis-

4 3 & 4 Wm. IV., c. 27; 4 Pom. Eq. Jur., § 1386, note 3.

5 Scott v. Fawcett, 1 Dick. 299; Horncastle v. Charlesworth, 11 Sim. 315; Jope v. Morshead, 6 Beav. 213; Bolton v. Ward, 4 Hare, 530.

6 4 & 5 Viet., c. 35, § 85.

7 Pom. Eq. Jur., § 1386.

factorily accounted for. "As early as the reign of Elizabeth, partition became a matter of equitable cognizance;⁸ and now the jurisdiction is established as of right in England and in the United States."⁹ The ground of the jurisdiction is sometimes stated as resting upon the principle of convenience,¹⁰ and sometimes as an ordinary case of discovery in aid of a legal right.¹¹ The true ground, however, is found in the inability of courts of law to furnish a plain, complete and adequate rem-

⁸ 1 Fonblanque's Equity, b. 1, c. 1, sec. 3, note f; *Speke v. Walrond*, Toth. 155; 4 Pom. Eq. Jur., § 1387, note 1.

⁹ 4 Pom. Eq. Jur., § 1387, note 2; *Agar v. Fairfax*, 17 Ves. 533, 2 Lead. Cas. Eq., 4th Am. ed., 865, 880, 894; *Parker v. Gerard*, Amb. 236; *Baring v. Nash*, 1 Ves. & B. 551; *McMath v. De Bardelaben*, 75 Ala. 68; *Mylin v. King*, 139 Ala. 319, 35 South. 998; *Gates v. Salmon*, 35 Cal. 576, 95 Am. Dec. 139; *De Uprey v. De Uprey*, 27 Cal. 329, 87 Am. Dec. 81; *Tate v. Goff*, 89 Ga. 184, 15 S. E. 30; *Hill v. Reno*, 112 Ill. 154, 54 Am. Rep. 222; *Howey v. Goings*, 13 Ill. 95, 46 Am. Dec. 427; *Milligan v. Poole*, 35 Ind. 64; *Gregory v. High*, 29 Ind. 527; *Nash v. Simpson*, 78 Me. 142, 3 Atl. 53; *Wood v. Little*, 35 Me. 107; *Reinhardt v. Wendek*, 40 Mo. 577; *Larned v. Renshaw*, 37 Mo. 458; *Waugh v. Blumenthal*, 28 Mo. 462; *Scott v. Guernsey*, 60 Barb. 163, 48 N. Y. 106; *Clemens v. Clemens*, 37 N. Y. 59; *Mead v. Mitchell*, 17 N. Y. 210, 72 Am. Dec. 455; *Tanner v. Niles*, 1 Barb. 560; *Green v. Putnam*, 1 Barb. 500; *Van Ardsdale v. Drake*, 2 Barb. 599; *Burhans v. Burhans*, 2 Barb. Ch. 398; *Harwood v. Kirby*, 1 Paige, 469; *Teal v. Woodworth*, 3 Paige, 470; *Wilkinson v. Parish*, 3 Paige, 653; *Sebring v. Mersereau*, Hopk. Ch. 501, 9 Cow. 344; *Wotten v. Copeland*, 7 Johns. Ch. 140; *Gregory v. Gregory*, 69 N. C. 522; *Donnell v. Matteer*, 7 Ired. Eq. 94; *Holmes v. Holmes*, 2 Jones Eq. 334; *Williams v. Van Tuyl*, 2 Ohio St. 336; *Tabler v. Wiseman*, 2 Ohio St. 207; *Bailey v. Sisson*, 1 R. I. 233; *Lindsey v. Brewer*, 60 Vt. 627; *Wiseley v. Findlay*, 3 Rand. (Va.) 361, 15 Am. Dec. 712; *Daniels v. Benedict*, 50 Fed. 347, citing Pom. Eq. Jur., § 1387. In *Cartwright v. Pultney*, 2 Atk. 380, it is stated that the relief in equity is discretionary. See, also, *Danvers v. Dorrity*, 14 Abb. Pr. (N. Y.) 206.

¹⁰ *Calmody v. Calmody*, 2 Ves. Jr. 570; *Baring v. Nash*, 1 Ves. & B. 555.

¹¹ *Watson v. Northumberland*, 11 Ves. 155; *Paddock v. Shields*, 57 Miss. 340. For other suggestions as to the ground of equity's jurisdiction, see *Kildare v. Eustace*, 1 Vern. 421; *Mundy v. Mundy*, 2 Ves. Jr. 122.

edy,¹² and in the case of personal property and equitable interests, in the absence of any legal remedy at all.¹³ While the jurisdiction of equity is concurrent, as to legal interests, it has, owing to the advantage possessed over the common-law court in being loose and free from all technical restraints and to the powers it possesses of dealing with and providing for the various interests it may meet with, practically become almost exclusive.¹⁴ As to personal property and equitable estates its jurisdiction is exclusive.¹⁵ In exercising its concurrent jurisdiction equity follows the analogies of the law.¹⁶ All of the states in this country have provided a statutory remedy for partition. These statutes are in substance enactments of the common law and equitable remedies and partake of the nature of both. Sometimes the jurisdiction is conferred upon courts of law, sometimes upon courts of equity, but more frequently upon courts exercising both legal and equitable jurisdiction. The statutory remedy is generally held to be cumulative and does not supersede the original jurisdiction in equity.¹⁷

¹² *Agar v. Fairfax*, 17 Ves. 551; *Watson v. Northumberland*, 11 Ves. 155; *Strickland v. Strickland*, 6 Beav. 77; *Mitford, Pl. Eq.*, by *Jeremy*, 120; 1 Fonbl. Eq., b. 1, c. 1, § 3, note f, pp. 20, 21.

¹³ *McCabe v. Hunter's Heirs*, 7 Mo. 356; *Hopkins v. Toll's Heirs*, 4 *Humph.* 46; *Stryker v. Lynch* 11 N. Y. Leg. Obs. 116; *Coale v. Barney*, 1 Gill & J. 341; *Allnatt on Partition*, 48; *Tripp v. Riley*, 15 Barb. 333; *Fobes v. Shattuck*, 22 Barb. 568; *Tinney v. Stebbins*, 28 Barb. 290; *Wetmore v. Zabriskie*, 29 N. J. Eq. 62; *Crapster v. Griffith*, 2 Bland, 525; *Smith v. Smith*, 4 Rand. 95, 102; *Kerley v. Clay*, 4 Bibb, 241; *Marshall v. Crow's Admr.*, 29 Ala. 278; *Conover v. Earl*, 26 Iowa, 167.

¹⁴ *Bac. Abr.*, Joint Tenants (I); *Beeler's Heirs v. Bullitt's Heirs*, 10 Ky. (3 A. K. Marsh.) 280, 13 Am. Dec. 161.

¹⁵ *Godfrey v. White*, 60 Mich. 443, 1 Am. St. Rep. 537, 27 N. W. 593; *Robinson v. Dickey*, 143 Ind. 205, 52 Am. St. Rep. 417, 42 N. E. 679; and cases in note 13, *supra*.

¹⁶ *Wills v. Slade*, 6 Ves. 498; *Baring v. Nash*, 1 Ves. & B. 555; *Evans v. Bagshaw*, L. R. 8 Eq. 469; *Wilkinson v. Steuart*, 74 Ala. 198.

¹⁷ *Wilkinson v. Steuart*, 74 Ala. 198; *Labadie v. Hewett*, 85 Ill.

§ 704. **Property Subject to Partition—In General.**—Following the analogies of the law, equity will grant partition only of property held in co-tenancy and in which the parties have a community of interest, either as co-tenants, tenants in common, or co-parceners; and this rule has not been materially affected by the statutory remedy of partition provided in all the states. Several persons may be owners of the same property without being co-tenants, and the severance of their interests may be desirable or even essential to the enjoyment of such property, but this constitutes no ground for equitable interference by way of partition. If the requisite of co-tenancy be present, all kinds of property are subject in equity to partition, whether it be corporeal or incorporeal, real or personal, and whether it be held by legal or equitable title.¹⁸

341; *Patton v. Wagner*, 19 Ark. 233; *Spitts v. Wells*, 18 Mo. 471; *Whitten v. Whitten*, 36 N. H. 332; *Hale v. Jaques*, 69 N. H. 411, 43 Atl. 121; *Rutherford v. Jones*, 14 Ga. 521, 60 Am. Dec. 655; *Wright v. Marsh*, 2 G. Greene (Iowa), 104; *Chrisman v. Divinia*, 141 Mo. 122, 41 S. W. 920. To the effect that the statutory remedy supersedes the remedy in equity, see *Gates v. Salmon*, 35 Cal. 576, 95 Am. Dec. 139; *Whiting v. Whiting*, 15 Gray, 504.

18 *Russell v. Beasley*, 72 Ala. 190; *Inman v. Prout*, 90 Ala. 362, 372, 7 South. 842; *Strong v. Harris*, 84 Hun, 314, 32 N. Y. Supp. 349; *Anderson School Tp. v. Milroy Lodge etc.*, 130 Ind. 108, 30 Am. St. Rep. 206, 29 N. E. 411; *Sneed's Heirs v. Atherton*, 6 Dana, 276, 32 Am. Dec. 70; *Kelly v. Muir*, 17 Ky. Law Rep. 167, 30 S. W. 653; *City of Baltimore v. City of New Orleans*, 45 La. Ann. 526, 12 South. 878; *Soutter v. Atwood*, 34 Me. 153, 56 Am. Dec. 647; *Haines v. Haines*, 4 Md. Ch. 133; *Metcalf v. Miller*, 96 Mich. 459, 35 Am. St. Rep. 617, 56 N. W. 16; *Benedict v. Torrent*, 83 Mich. 181, 21 Am. St. Rep. 589, 47 N. W. 129, 11 L. R. A. 278; *Foreman v. Hough*, 98 N. C. 386, 3 S. E. 912; *Harman v. Kelley*, 14 Ohio, 502, 45 Am. Dec. 552; *Du Pont v. Du Bos*, 52 S. C. 244, 29 S. E. 665 (lands held by fee conditional, partible). In *Barr v. Lamaster*, 48 Neb. 114, 66 N. W. 1110, 32 L. R. A. 451, owners in severalty of adjoining lots, pursuant to agreement, erected buildings thereon, having the stairs, hallways, skylight and heating apparatus in common. Held, the agreement creates only cross-easements and there is nothing owned

§ 705. **Personal Property.**—"The rules and proceedings which obtained at common law and by statute on the subject of partition related exclusively to real estate.¹⁹ At common law the co-owner of a chattel could maintain an action respecting the common property against his co-tenant only where a loss, destruction, or sale of the property was provable against the defendant.²⁰ However expedient the partition of chattels might appear, or however desirable it might be to the co-tenants, the common law furnished no instrumentality by which the partition could be judicially effected. There was not merely an inadequacy of legal remedy, there was an utter absence of it. The situation clearly demanded the intervention of equity. And although the inception of the equitable jurisdiction for the partition of chattels is not traceable with certainty, the jurisdiction itself is unquestioned; and where a literal partition is not practicable, the court will order a sale."²¹ The jurisdiction

in common which can be partitioned. See, also, *McConnel v. Kibbe*, 43 Ill. 12, 92 Am. Dec. 93, and *Johnson v. Moser*, 72 Iowa, 523, 34 N. W. 314, where the ownership of property was held to be in severalty and not subject to partition. In *Truth Lodge No. 213 etc. v. Barton*, 119 Iowa, 230, 97 Am. St. Rep. 303, 93 N. W. 106, where the land was owned jointly and the building severally, partition by sale was granted.

Immaterial whether title be legal or equitable: *Stein v. McGrath*, 128 Ala. 175, 30 South. 792; *Royston v. Miller*, 76 Fed. 50. The owner of a life estate cannot have partition against owners of remainder: *Love v. Blauw*, 61 Kan. 496, 78 Am. St. Rep. 334, 59 Pac. 1059, 48 L. R. A. 257; *Smith v. Runnels*, 97 Iowa, 55, 65 N. W. 1002; *Metcalfe v. Miller*, 96 Mich. 459, 35 Am. St. Rep. 617, 56 N. W. 16.

¹⁹ *Allnatt on Partition*, 48; 4 Pom. Eq. Jur., § 1391, note 1.

²⁰ *Cowles v. Garrett's Admrs.*, 30 Ala. 341; *Tinney v. Stebbins*, 28 Barb. 290; *Gilbert v. Dickerson*, 7 Wend. 449, 22 Am. Dec. 592; *Hinds v. Terry*, Walk. (Miss.) 80; 4 Pom. Eq. Jur., § 1391, note 2.

²¹ Pom. Eq. Jur., § 1391; *Marshall v. Crow's Admr.*, 29 Ala. 278; *Smith v. Dunn*, 27 Ala. 315; *Conover v. Earl*, 26 Iowa, 167; *Kerley v. Clay*, 4 Bibb, 241; *Crapster v. Griffith*, 2 Bland (Md.), 5; *Godfrey*

Equitable Remedies, Vol. II—75

of equity over the partition of chattels is exclusive, and extends even to the settling of disputed titles.²²

§ 706. *Future Estates.*—The object of the action at law for partition, as it lay among co-parceners and later among tenants in common and joint tenants, was to obtain relief from the inconveniences and embarrassments incident to the joint occupation of land and to gain the advantages of a tenancy in severalty. The remedy had special reference to present possession. Estates in remainder and in reversion were, therefore, not subject to partition at law. Unless modified by statute, the rule is the same in equity, and a bill will not lie to partition a future estate unconnected with an estate in possession.²³ While a future estate cannot be partitioned in equity at the suit of a co-owner thereof, the owners of future estates may be made parties defendant to a bill by the owner of a particular estate and may be compelled to execute conveyances for the purpose of carrying out a decree of partition.²⁴ By statute in

v. White, 60 Mich. 443, 1 Am. St. Rep. 537, 27 N. W. 593; *Potter v. Stone*, 70 Miss. 291, 12 South. 208; *Caldwell v. Wright*, 88 Mo. App. 604; *Wetmore v. Zabriskie*, 29 N. J. Eq. 62; *Fobes v. Shattuck*, 22 Barb. 568; *Tripp v. Riley*, 15 Barb. 333; *Edwards v. Bennett*, 10 Ired. (N. C.) 363; *Weeks v. Weeks*, 5 Ired. Eq. 111, 47 Am. Dec. 358; *Neal v. Suber*, 56 S. C. 298, 33 S. E. 463; *Smith v. Smith*, 4 Rand. (Va.) 95, 102. To the effect that money judgments cannot be partitioned: *Moorer v. Moorer*, 84 Ala. 353, 4 South. 234; *Spaulding v. Warner*, 59 Vt. 646, 11 Atl. 186.

²² *Robinson v. Dickey*, 143 Ind. 205, 52 Am. St. Rep. 417, 42 N. E. 679; *Godfrey v. White*, 60 Mich. 443, 1 Am. St. Rep. 537, 27 N. W. 593; *Pom. Eq. Jur.*, § 1392.

²³ *Evans v. Bagshaw*, L. R. 5 Ch. App. 340, 39 L. J. Ch. D. 145; *Wilkinson v. Stuart*, 74 Ala. 198; *Bool v. Mix*, 17 Wend. 119, 31 Am. Dec. 285; *Stevens v. Enders*, 1 Green (13 N. J. L.), 273; *Packard v. Packard*, 16 Pick. 194; *Ziegler v. Grim*, 6 Watts, 106; *Baldwin v. Aldrich*, 34 Vt. 532, 80 Am. Dec. 695; *Brown v. Brown*, 8 N. H. 94; *Norment v. Wilson*, 5 Humph. 310; *Robertson v. Robertson*, 2 Swan, 201; *Simmons v. Mac Adaras*, 6 Mo. App. 297.

²⁴ *Gaskell v. Gaskell*, 6 Sim. 643; *Martyn v. Perryman*, 1 Ch. Rep.

some of the states, it is provided that partition may be had when two or more persons are interested in real property as joint tenants or tenants in common. This has been held to authorize a partition of an estate in remainder or in reversion.²⁵

§ 707. **Incorporeal and Other Property.**—Because of the facility with which courts of equity can deal with the numerous and complicated interests arising from the common ownership of various sorts of property, there is a peculiar fitness in resorting to those courts, where relief is obtainable in many cases in which the parties would be practically remediless at law. Thus, on a bill to partition the use of waters, equity will decree the use thereof for alternate periods by the parties,²⁶ or will assign to each owner so much water as will run through a gate of certain dimensions or through certain channels of the river.²⁷ Where property is not in its nature sev-

235; *Brook v. Hertford*, 2 P. Wms. 518; *Hobson v. Sherwood*, 4 Beav. 184; *Wills v. Slade*, 6 Ves. 498; *Duke v. Hague*, 107 Pa. St. 57; *Gayle v. Johnston*, 80 Ala. 395; *Sullivan v. Sullivan*, 66 N. Y. 37. See, also, 4 Pom. Eq. Jur., § 1387, note 3.

25 *Hilliard v. Scoville*, 52 Ill. 449; *Drake v. Merkle*, 153 Ill. 318, 38 N. E. 654; *Miller v. Lanning*, 211 Ill. 620, 71 N. E. 1115; *Smalley v. Isaacson*, 40 Minn. 450, 42 N. W. 352; *Cook v. Webb*, 19 Minn. 167; *Smith v. Gaines*, 38 N. J. Eq. 65; *Howell v. Mills*, 56 N. Y. 227; *Jenkins v. Fahey*, 73 N. Y. 355; *Bierce v. James*, 87 Tenn. 538, 553, 11 S. W. 788; *Phillips v. Johnson*, 14 B. Mon. 140; *Preston v. Brant*, 96 Mo. 552, 10 S. W. 78. To the effect that a contingent remainder or an executory devise cannot be partitioned, see *Smith v. Smith* (Tenn.), 57 S. W. 198; *Muldoon v. Trew hitt* (Tenn.), 38 S. W. 109; *Havey v. Kelleher*, 36 App. Div. 201, 56 N. Y. Supp. 889; *Aydlett v. Pendleton*, 111 N. C. 28, 32 Am. St. Rep. 776 (monographic note), 16 S. E. 8.

26 *Smith v. Smith*, Hoff. Ch. (N. Y.) 506. Also in *Bodicoate v. Steers*, 1 Dick. 69, and *Buller v. Bishop of Exeter*, 1 Ves. Sr. 340, on a bill to partition an advowson the court decreed that the parties should present by alternate terms.

27 *Morrill v. Morrill*, 5 N. H. 134; *Warren v. Westbrook Mfg.*

erable, the profits may be divided or alternate occupation decreed,²⁸ or the property sold.²⁹ Mining rights may be partitioned by sale and a division of the proceeds, if they are so created as to amount to legal estates of freehold, and are not mere licenses to dig on another's land.³⁰ Co-owners of growing timber or of crops raised jointly may have partition.³¹ Real estate held by partners for partnership purposes is not subject to compulsory partition unless it is clear that the other property of the firm is ample to meet the firm obliga-

Co., 88 Me. 58, 51 Am. St. Rep. 372, 33 Atl. 665, 35 L. R. A. 388. In *McGillivray v. Evans*, 27 Cal. 92, the court refused to make a mechanical division of the water running through a ditch and ordered a sale; *Cooper v. Cedar Rapids Water-Power Co.*, 42 Iowa, 398.

²⁸ *Bishop of Salisbury v. Philips*, 1 Salk. 43, Co. Litt. 4, a, 167, a, b; *Fitzherbert's Nat. Brev.*, 62, I; *Allnatt on Partition*, 51; *Hanson v. Willard*, 12 Me. 142, 28 Am. Dec. 162; *Warner v. Baynes*, Amb. 589; *Turner v. Morgan*, 8 Ves. 143.

²⁹ In *Hall v. Vernon*, 47 W. Va. 295, 81 Am. St. Rep. 791, 34 S. E. 764, the court refused to make an actual partition of oil and gas owned by co-owners separate from the surface, because of the nature of the property.

³⁰ *Canfield v. Ford*, 16 How. Pr. 473, 28 Barb. 336; *Merritt v. Judd*, 14 Cal. 64; *Merced Mining Co. v. Fremont*, 7 Cal. 319, 68 Am. Dec. 262; *Lenfers v. Henke*, 73 Ill. 405, 24 Am. Rep. 263; *Ryan v. Egan*, 26 Utah, 241, 72 Pac. 933; *Hughes v. Devlin*, 23 Cal. 504 (license); *Smith v. Cooley*, 65 Cal. 46, 2 Pac. 880 (license). A mere license to dig on another's land is indivisible because a division would create new rights and thus surcharge the land. For the same reason, estovers, corodies uncertain, piscaries uncertain, and commons sans nombre were not subject to partition: Co. Litt. 165, a; *Allnatt on Partition*, 8; *Livingston v. Ketcham*, 1 Barb. 597. To the effect that there can be no partition of lands containing mineral deposits if the location, extent and value of such deposits cannot be ascertained, see *Kemble v. Kemble*, 44 N. J. Eq. 454, 11 Atl. 733; *Boston Franklinite Co. v. Condit*, 19 N. J. Eq. 394; *Grubb v. Bayard*, 2 Wall. Jr. 81, Fed. Cas. No. 5849.

³¹ *Steedman v. Weeks*, 2 Strob. Eq. 146, 49 Am. Dec. 660; *Neal v. Suber*, 56 S. C. 298, 33 S. E. 463.

tions.³² In England, however, the real estate of a partnership is regarded as so essentially converted into personalty that it cannot be judicially partitioned.³³ No partition in equity can be had among co-tenants of property held by entirety until the tenancy has been converted into a tenancy in common by proper judicial proceedings.

§ 708. **Limitations on the Right to Partition.**—Although there are a few cases to the contrary,³⁵ the rule is practically universal that a co-tenant is entitled at law to an actual partition as a matter of absolute right, and the fact that the division will result in great hardship and inconvenience or the virtual destruction of the property is no reason for withholding it. A co-tenant need not assign any reason for desiring a partition; it is sufficient if he wishes to enjoy his estate in severalty. Equity followed the law in this regard and decreed an

³² *Kruschke v. Stefan*, 83 Wis. 373, 53 N. W. 679; *Molineaux v. Reynolds*, 54 N. J. Eq. 559, 35 Atl. 536; *Craighead v. Pike*, 58 N. J. Eq. 15, 43 Atl. 424; *Pennybacker v. Leary* (Ia.), 21 N. W. 575; *Baird v. Baird's Heirs*, 1 Dev. & B. Eq. 524, 31 Am. Dec. 399; *Flanner v. Moore*, 2 Jones, 123; *Buchan v. Sumner*, 2 Barb. Ch. 204; *Roberts v. McCarty*, 9 Ind. 18, 68 Am. Dec. 604; *Patterson v. Blake*, 12 Ind. 436; *Jackson v. Deese*, 35 Ga. 88; *Ingraham v. Mariner*, 194 Ill. 269, 62 N. E. 609. But in *Hughes v. Devlin*, 23 Cal. 507, the court said that the mere fact that real estate is owned by partners for partnership purposes affords no valid objection to a partition.

See, also, on the subject of partnership real estate, *post*, chapter XLIX.

³³ *Wilde v. Milne*, 26 Beav. 504; *Crawshay v. Maule*, 1 Swanst. 518; *Darby v. Darby*, 3 Drew. 501.

³⁴ *Green v. King*, 2 W. Bl. 121; *Dias v. Glover*, 1 Hoff. Ch. (N. Y.) 76; *Stuckey v. Keefe's Ex.*, 26 Pa. St. 400; *De Godey v. Godey*, 39 Cal. 162; *Ketchum v. Walsworth*, 5 Wis. 95, 68 Am. Dec. 49.

³⁵ *Conant v. Smith*, 1 Aik. (Vt.) 67, 15 Am. Dec. 669; *Brown v. Turner*, 1 Aik. 350, 15 Am. Dec. 696; *Miller v. Miller*, 13 Pick. 237. In the second case, one reason for denying the relief was that the parties had a more adequate remedy in equity.

actual partition notwithstanding manifest hardship.³⁶ While equity treats the right to partition as absolute, it is not restricted, as is a court of law, to an actual physical apportionment according to titles proved, but having control of the parties and greater freedom of action, it may mollify the hardships by adjusting the adverse interests and by making such an allotment as will most nearly effect justice and equality among the parties.³⁷ As is shown elsewhere,³⁸ a court of equity formerly labored under the same disadvantage in

³⁶ *Cates v. Johnson*, 109 Ala. 126, 19 South. 416; *Land v. Smith*, 44 La. Ann. 931, 11 South. 577; *Hanson v. Willard*, 12 Me. 147, 28 Am. Dec. 162; *Smith v. Smith*, 10 Paige, 473; *Donnell v. Mateer*, 7 Ired. Eq. 94; *Scovil v. Kennedy*, 14 Conn. 360; *Bradley v. Harkness*, 26 Cal. 77; *Lake v. Jarret*, 12 Ind. 395; *Udike v. Adams*, 22 R. I. 432, 48 Atl. 384; *O'Brien v. Mahoney*, 179 Mass. 200, 88 Am. St. Rep. 371, 60 N. E. 493. In *Turner v. Morgan*, 8 Ves. 143, the court confirmed a report of a commission which allotted to the plaintiff, in a partition proceeding in equity to divide a house, the whole stack of chimneys, all the fireplaces, the only staircase, and all the conveniences in the yard. Also, in *Parker v. Gerard*, Amb. 236, an actual partition was decreed, although the land in question extended a mile and a half, some parts were rocky and poor, and some parts had water and others none.

³⁷ *Warner v. Baynes*, Amb. 589; *Agar v. Fairfax*, 17 Ves. 533; *Donnell v. Mateer*, 7 Ired. Eq. 94; also cases in notes 26 to 29 under the last section. "The peculiarities of an equitable partition are, that such part of the land as may be more advantageous to any party on account of its proximity to his other land, or for any other reason, will be directed to be set off to him if it can be done without injury to the others; that when the lands are in several parcels, each joint owner is not entitled to a share of each parcel, but only to his equal share in the whole; that where a partition exactly equal cannot be made without injury, a gross sum or yearly rent may be directed to be paid for owelty or equality of partition by one whose share is too large to others whose shares are too small; and that when one joint owner has put improvements on the property, he shall receive compensation for his improvements, either by having the part on which the improvements are assigned to him at the value of the land without the improvements, or by compensation directed to be made for them": *Hall v. Piddock*, 21 N. J. Eq. 316.

³⁸ See *post*, "Partition by Sale," § 722.

England as a court of law in not being able to order a sale of the property without the consent of all the parties interested. In this country, however, statutes were early passed conferring this power upon equity courts so that in proper cases a sale and a division of the proceeds may be decreed.³⁹

While the character of the property affords no bar to a partition, there are many cases in which equity will refuse to decree a division, as where property is charged with some trust or is dedicated to some use which would be defeated by the partition. There can be no partition which will defeat the purpose of a valid trust created by deed or will,⁴⁰ nor will equity grant a partition contrary to the expressed desires of a testator.⁴¹ Where, however, all the beneficiaries under a trust consent to a partition, equity may order the same and terminate the trust, or may order the property held for the beneficiaries in severalty, provided such termination or holding will not defeat the objects of the trust.⁴² Where property is devoted to a public use, no partition detrimental

³⁹ See *post*, "Partition by Sale," § 722.

⁴⁰ Equity will deny a partition which would defeat the purposes of a valid trust created by deed or will: *Sicker v. Sicker*, 23 Misc. Rep. 737, 53 N. Y. Supp. 106; *Pierson v. Van Bergen*, 23 Misc. Rep. 547, 52 N. Y. Supp. 890; *Young v. Young*, 20 Ky. Law Rep. 1741, 49 S. W. 1074; *Outcalt v. Appleby*, 36 N. J. Eq. 73; *Cabbage v. Franklin*, 62 Mo. 364; *Hill v. Jones*, 65 Ala. 214; *Gerard v. Buckley*, 137 Mass. 475.

⁴¹ *Springer v. Savage*, 143 Ill. 301, 32 N. E. 520; *Blake v. Blake*, 118 N. C. 575, 24 S. E. 424; *Wells v. Houston* (Tex.), 56 S. W. 233; *Cohill v. Cohill*, 62 N. J. Eq. 157, 49 Atl. 809; *Stevens v. De La Veuex*, 166 Mo. 20, 65 S. W. 1003; *Striker v. Mott*, 2 Paige, 387, 22 Am. Dec. 646; *Gulick v. Huntley*, 144 Mo. 241, 46 S. W. 154. To the effect that a discretionary power to sell given to executors does not prevent a partition, see *Miller v. Miller*, 22 Misc. Rep. 582, 49 N. Y. Supp. 407; *Wood v. Hubbard*, 29 App. Div. 166, 51 N. Y. Supp. 526.

⁴² *Briggs v. Peacock*, 52 L. J. Ch. D. 1; *Taylor v. Grange*, 49 L. J. Ch. D. 794; *Morse v. Morse*, 85 N. Y. 53; *Wetmore v. Zabriskie*, 29 N. J. Eq. 62.

to public right or policy will be permitted,⁴³ and where property is devoted to a religious or charitable use of such a nature that a partition would be especially disastrous, equity will not enforce a division.⁴⁴ A homestead is regarded, in most of the states, as appropriated to a use which requires its occupancy as a whole, and a partition thereof cannot be had among the heirs of the deceased owner.⁴⁵ The inchoate right of dower which may exist in favor of the wife of a co-tenant does not prevent a compulsory partition. On a division of the land the dower right attaches to the moiety set apart to her husband.⁴⁶ Where, however, the right of dower exists before the co-tenancy arises, partition can only be had subject to such right.⁴⁷ Certain interests cannot be partitioned because of the effect on the rights of

⁴³ *Railroad Co. v. Railroad Co.*, 38 Ohio St. 614; *Newcomb v. Newcomb*, 12 N. Y. 603; *Hodges v. Pingree*, 10 Gray, 14.

⁴⁴ *Latshaw's Appeal*, 122 Pa. St. 142, 9 Am. St. Rep. 76, 15 Atl. 676; *Rice v. Osgood*, 9 Mass. 38. In *Brown v. Lutheran Church*, 23 Pa. St. 500, the court refused to order a partition of a burying-ground held by two religious societies in common, although a severable part of the land was not occupied by graves.

⁴⁵ *Wells v. Sweeney* (S. D.), 94 N. W. 394; *Rowe v. Rowe*, 61 Kan. 862, 60 Pac. 1049; *Rhorer v. Brockhage*, 13 Mo. App. 397; *Trotter v. Trotter*, 31 Ark. 145; *Nicholas v. Purezell*, 21 Iowa, 266, 89 Am. Dec. 572; *Hardy v. Gregg* (Miss.), 2 South. 358. But see *Robinson v. Baker*, 47 Mich. 619, 11 N. W. 410. In *Ferguson v. Reed*, 45 Tex. 574, the grantee of a husband and wife of an undivided interest in their homestead was permitted to have partition. See, also, *Faircloth v. Carroll*, 137 Ala. 243, 34 South. 182.

Where there are infant co-tenants, equity may refuse to grant partition if it appears that the best interests of the minors will not be served thereby: *Pitman v. England* (Tenn.), 46 S. W. 464; *Tomkins v. Miller* (N. J. Eq.), 27 Atl. 484.

⁴⁶ *Wilkinson v. Parisk*, 3 Paige, 658; *Lee v. Lindell*, 22 Mo. 203, 64 Am. Dec. 262; *Mosher v. Mosher*, 32 Mo. 414; *Totten v. Stuyvesant*, 3 Edw. Ch. 503; *Matthews v. Matthews*, 1 Edw. Ch. 567.

⁴⁷ *Coles v. Coles*, 15 Johns. 159, 8 Am. Dec. 231; *White v. White*, 16 Gratt. 267, 80 Am. Dec. 706; *Bradshaw v. Callaghan*, 8 Johns. 563; *Ward v. Gardner*, 112 Mass. 42. As to estates subject to curtesy, see *Bierce v. James*, 87 Tenn. 553, 11 S. W. 788.

third persons.⁴⁸ Nor will equity entertain a bill for the partition of land which has already been partitioned by agreement of the owners.⁴⁹ There is some authority for the view that an agreement among co-tenants not to partition their common property is invalid, either because it is repugnant to the partible quality which is an essential characteristic of such estates, or because it is a restraint on alienation and contrary to public policy. It would seem that an agreement never to partition might be subject to the latter objection.⁵⁰ The prevailing rule, however, is that the right to a compulsory partition is given for the benefit of co-tenants and may be waived by agreement,⁵¹ and where such a stipulation is an incident to the purchase of lands or other property for the carrying out of a common project to the success of which the preservation of the property as a whole is essential, equity will not compel a partition in violation of the contract.⁵²

§ 709. Who is Entitled to Partition.—Unless modified by statute or subject to exceptions hereafter noted, the general rule in equity, as well as at law, is that a party applying for partition must not only have a present estate in the property, real or personal, as joint tenant or

⁴⁸ Co. Litt. 165 a. See cases cited in note 30 to last section.

⁴⁹ *Welchel v. Thompson*, 39 Ga. 559, 99 Am. Dec. 470; *Hardy v. Summers*, 10 Gill & J. (Md.) 316, 32 Am. Dec. 167; *Coon v. Cronk*, 131 Ind. 44, 30 N. E. 882.

⁵⁰ *Mitchell v. Starbuck*, 10 Mass. 11; *Haeussler v. Missouri Iron Co.*, 110 Mo. 188, 33 Am. St. Rep. 431, 19 S. W. 75, 16 L. R. A. 220 (annotations); *Pick v. Cardwell*, 2 Beav. 137.

⁵¹ *Martin v. Martin*, 170 Ill. 639, 62 Am. St. Rep. 411, 48 N. E. 924; *Brown v. Coddington*, 72 Hun, 147, 25 N. Y. Supp. 649; *Coleman v. Coleman*, 19 Pa. St. (7 Harr.) 100, 57 Am. Dec. 641; *Spaulding v. Woodward*, 63 N. H. 573, 16 Am. Rep. 392; *Eberts v. Fisher*, 54 Mich. 294, 20 N. W. 80; *Avery v. Payne*, 12 Mich. 549.

⁵² *Hunt v. Wright*, 47 N. H. 399, 93 Am. Dec. 451; *Selden v. Vermilya*, 2 Sandf. (N. Y.) 568; *Pick v. Cardwell*, 2 Beav. 137.

tenant in common, but he must also have an actual or constructive possession of his undivided share or interest therein.⁵³ But he will be aided by the presumption that possession usually follows the legal title when no adverse possession is shown.⁵⁴ In equity, as at law, a pending lease for years to a third party or to a co-tenant is no obstacle to a partition between the owners of the fee.⁵⁵ The grantee or assignee of the share of a co-tenant acquires all the rights of his grantor to enforce

53 *Burhans v. Burhans*, 2 Barb. Ch. 398; *Brownell v. Brownell*, 19 Wend. 367; *Stevens v. Enders*, 13 N. J. L. 271; *Atha v. Jewell*, 33 N. J. Eq. 417; *Culver v. Culver*, 2 Root (Conn.), 278; *Damron v. Campion*, 24 Misc. Rep. 234, 53 N. Y. Supp. 543; *Sullivan v. Sullivan*, 66 N. Y. 37; *Striker v. Mott*, 2 Paige, 387, 22 Am. Dec. 646; *Sterling v. Sterling*, 43 Or. 200, 72 Pac. 741; *Hutson v. Hutson*, 139 Mo. 229, 40 S. W. 886; *Brook v. Eastman*, 28 Vt. 658, 67 Am. Dec. 733; *Rich v. Bray*, 37 Fed. 273, 2 L. R. A. 225; *McMurty v. Keifner*, 36 Neb. 522, 54 N. W. 844; *Hoyle v. Huson*, 1 Dev. 348; *Whitten v. Whitten*, 36 N. H. 332; *Schori v. Stephens*, 62 Ind. 441; *Nichols v. Nichols*, 28 Vt. 230, 67 Am. Dec. 699 (annotated case); *Packard v. Packard*, 16 Pick. 194; *Brown v. Brown*, 8 N. H. 94; *Norment v. Wilson*, 5 Humph. (Tenn.) 310; *Robertson v. Robertson*, 2 Swan (Tenn.), 201; *Evans v. Bagshaw*, L. R. 8 Eq. 469, L. R. 5 Ch. 340; *Wood v. Sugg*, 91 N. C. 93, 49 Am. Rep. 639; *Osborne v. Mull*, 91 N. C. 203; *Cannon v. Lomax*, 29 S. C. 369, 13 Am. St. Rep. 739, 7 S. E. 529, 1 L. R. A. 637; *Weeks v. Weeks*, 40 N. C. 711, 47 Am. Dec. 358 (personalty); *Conter v. Herschel*, 24 Nev. 152, 50 Pac. 851 (personalty). Equity may retain the bill until the parties are entitled to possession: *Cole v. Creyon*, 1 Hill Eq. 311, 26 Am. Dec. 208.

54 *Byers v. Danley*, 27 Ark. 96; *Wommack v. Whitmore*, 58 Mo. 448; *Beebe v. Griffing*, 14 N. Y. 238.

55 *Willard v. Willard*, 145 U. S. 116, 36 L. ed. 644, 12 Sup. Ct. 818; *Haenssler v. Missouri Iron Co.*, 110 Mo. 188, 33 Am. St. Rep. 431, 19 S. W. 75, 16 L. R. A. 220; *Wilkinson v. Joberns*, L. R. 16 Eq. 14; *Hunt v. Hazelton*, 5 N. H. 216, 20 Am. Dec. 575; *Woodworth v. Campbell*, 5 Paige, 518; *Thurston v. Minke*, 32 Md. 571; *Cook v. Webb*, 19 Minn. 167; *Co. Litt.* 46, a, 167, a; *Com. Dig.*, "Parcener," C. 6. See *Hunnewell v. Taylor*, 6 Cush. 472, *contra*, but since changed by statute. Lessor's heirs cannot have partition of leased premises during pendency of the lease: *Cannon v. Lomax*, 29 S. C. 369, 13 Am. St. Rep. 739, 7 S. E. 529, 1 L. R. A. 637.

partition.⁵⁶ A mortgagor may at any time before foreclosure maintain proceedings for partition, subject to the interests of the mortgagee.⁵⁷ A mortgagee, being generally regarded in this country as having only a defeasible title before foreclosure and the expiration of the period of redemption, is not entitled to have partition, but after his interest becomes indefeasible by reason of appropriate proceedings had to cut off the equity of redemption, he may have his interest set aside in severalty.⁵⁸ Reversioners and remainder-men, while liable to be made defendants in a suit in equity to enforce partition, cannot bring a proceeding for that purpose. In a few states, however, estates in remainder or reversion may be partitioned at the suit of the co-owners.⁵⁹ A co-tenant for life or for years may, either at law or in equity, enforce partition of the particular estate, and in equity may make the owners of the future estates par-

⁵⁶ *Hill v. Jones*, 65 Ala. 214; *Stewart's Appeal*, 56 Pa. St. 242; *Collamer v. Hutchins*, 27 Vt. 734; *King v. Howard*, 27 Mo. 21; *Ragan's Estate*, 7 Watts (Pa.), 442; *Welch v. Agar*, 84 Ga. 583, 20 Am. St. Rep. 380, 11 S. E. 149 (creditor of co-tenant); *Van Arsdale v. Drake*, 2 Barb. 600; *Newton Bank v. Hull*, 10 Allen, 145; *Fairecloth v. Carroll*, 137 Ala. 243, 34 South. 182; *Mee v. Benedict*, 98 Mich. 260, 39 Am. St. Rep. 543, 57 N. W. 175, 22 L. R. A. 641.

⁵⁷ *Green v. Arnold*, 11 R. I. 364, 23 Am. Rep. 466; *Colton v. Smith*, 11 Pick. 311, 22 Am. Dec. 375; *Wotten v. Copeland*, 7 Johns. Ch. 140; *Upham v. Bradley*, 17 Me. 427; *Hall v. Morris*, 13 Bush, 322.

⁵⁸ *Phelps v. Townsley*, 10 Allen, 554; *Ewer v. Hobbs*, 5 Met. 6; *Fall v. Elkins*, 9 Week. Rep. 861. Where mortgage is to co-tenant, no foreclosure: *Yglesias v. Dewey*, 60 N. J. Eq. 62, 47 Atl. 59; *Bradley v. Fuller*, 23 Pick. 1. But see *Waite v. Bingley*, L. R. 21 Ch. D. 674.

⁵⁹ *Wood v. Sugg*, 91 N. C. 93, 49 Am. Rep. 639; *Savage v. Savage*, 19 Or. 112, 20 Am. St. Rep. 795, 23 Pac. 890; *Merritt v. Hughes*, 36 W. Va. 356, 15 S. E. 56; *Harding v. Craft*, 21 App. Div. 139, 47 N. Y. Supp. 450; *Hughes v. Hughes*, 63 How. Pr. 408; *Tabler v. Wiseman*, 2 Ohio St. 208; *Sullivan v. Sullivan*, 66 N. Y. 37. But see *Drake v. Merkle*, 153 Ill. 318, 38 N. E. 654, permitting the action. See, also, note 25, "Future Estates," *ante*, § 706.

ties and have such a decree as will fairly adjust all the interests in the estate.⁶⁰ While an infant may enforce partition, equity does not, as with an adult, regard the right as absolute, but subject to such limitations as the court may deem essential for the protection of the interests of the petitioner.⁶¹ A partition in equity proceeding upon the theory of mutual conveyances, the court, in cases where the interests of infant co-tenants are involved, is obliged, by reason of the incapacity of the infants to execute valid conveyances, to make an allotment and to quiet the possession of the respective parties until the disabilities of infancy were removed, when conveyances would be ordered.⁶² In some jurisdictions, heirs to whom real estate has descended may, although the same is in the possession of an administrator and still liable to be taken for the debts of the ancestor, enforce a partition.⁶³ A tenant in dower not

⁶⁰ *Gaskell v. Gaskell*, 6 Sim. 643; *Duke v. Hague*, 11 Out. (Pa.) 67; *Wills v. Slade*, 6 Ves. 498; *Baring v. Nash*, 1 Ves. & B. 551; *Ackley v. Dygert*, 33 Barb. 189; *Mussey v. Sanborn*, 15 Mass. 155; *Eisner v. Curiel*, 20 Misc. Rep. 245, 45 N. Y. Supp. 1010 (joint life use of personalty); *Alnatt on Partition*, 91.

⁶¹ *Shull v. Kennon*, 12 Ind. 35; *Postley v. Cain*, 4 Sandf. Ch. 509; *Goudy v. Shank*, 8 Ohio, 415; *Hartman v. Hartman*, 59 Ill. 104. As the partition of property in which infant co-tenants are interested is often subject to statutory regulation, the statutes of the state in question should be consulted.

⁶² *Lord Brook v. Lord Hertford*, 2 P. Wms. 519; *Croghan v. Livingston*, 17 N. Y. 220. Formerly the infant was allowed his day in court after attaining majority, to show cause against the partition, but this was abolished by statute in England (13 & 14 Vict., c. 60, § 30), and the infant is regarded as a trustee of the portions assigned to the other co-tenants: *Bowra v. Wright*, 4 De Gex & S. 265. In the United States the decree has usually the effect of vesting title without a conveyance: *Griffith v. Phillips*, 3 Grant Cas. 381; and see *post*, § 721, "Mode of Partition," note 129.

⁶³ *Kelley v. Kelley*, 41 N. H. 502; *Page v. Webster*, 8 Mich. 263, 77 Am. Dec. 446; *Garrett v. Colvin*, 77 Miss. 408, 26 South. 963. *Contra*, *Hubbard v. Ricart*, 3 Vt. 207, 23 Am. Dec. 198; *Beecher v. Beecher*, 43 Conn. 556; *Alexander v. Alexander*, 26 Neb. 68, 41 N. W.

being a co-tenant is not entitled to enforce partition, but a tenant by the curtesy of land held in co-tenancy may have a division.⁶⁴

§ 710. Effect of Disseisin.—The object of the proceeding in a petition for partition being to turn an estate that is possessed in common into an estate in severalty, and not to furnish a method for settling conflicting titles, a co-tenant who has been disseised and has only a mere right of entry cannot maintain the action. Only those persons who are co-tenants may have partition. If, therefore, one is effectively disseised, whether by his co-tenant or by a stranger, he is no longer holding an estate in co-tenancy. He must first establish by an appropriate action his *status* as a co-tenant.⁶⁵ There must be an actual and total ouster. Mere possession by one co-tenant to the exclusion of the other does not necessarily work a disseisin. Possession usually follows the legal title when no adverse possession is shown, and consequently, when one of several co-tenants is in possession, his possession will, in the absence of an act of

1065; *Clarity v. Sheridan*, 91 Iowa, 304, 59 N. W. 52; *Trowbridge v. Caulkins*, 17 R. I. 580, 23 Atl. 1102; *Moore v. Moore (Tex.)*, 31 S. W. 532.

⁶⁴ *Ullrich v. Ullrich (Wis.)*, 101 N. W. 376; *Purdy v. Purdy*, 18 App. Div. 310, 46 N. Y. Supp. 215; *Wood v. Clute*, 1 Sandf. Ch. 200; *Coles v. Coles*, 15 Johns. 320, 8 Am. Dec. 231; *Riker v. Darke*, 4 Edw. Ch. 668; *Otley v. McAlpine's Heirs*, 2 Gratt. 343.

⁶⁵ *Criseoe v. Hambrick*, 47 Ark. 235, 1 S. W. 150; *Sanders v. Devereux*, 60 Fed. 311, 8 C. C. A. 629; *Frey v. Willoughby*, 63 Fed. 865, 27 U. S. App. 417, 11 C. C. A. 463; *American Assn. v. Eastern Ky. Land Co.*, 68 Fed. 722; *Biglow v. Biglow*, 39 App. Div. 103, 56 N. Y. Supp. 794; *Davis v. Settle*, 43 W. Va. 17, 26 S. E. 557; *Haskell v. Queen*, 66 Hun. 634, 21 N. Y. Supp. 357; *Hoffman v. Beard*, 22 Mich. 66; *Drew v. Clemmons*, 2 Jones Eq. 314; *Thomas v. Garvan*, 4 Dev. 223, 25 Am. Dec. 708; *Spight v. Waldron*, 51 Miss. 356; *Matthewson v. Johnson*, Hoff. Ch. 560; *Harman v. Kelley*, 14 Ohio, 502, 45 Am. Dec. 552.

ouster on his part, inure to the benefit of all.⁶⁶ In some states, it is sufficient if a co-tenant shows a requisite title, notwithstanding he is out of possession and the property is held adversely. The tendency is to adjust all the conflicting rights in one action, and this is often made possible by statutes conferring general and enlarged powers over legal and equitable remedies upon the same court.⁶⁷

§ 711. *Disseisin—Rule in Equity.*—The rule that a plaintiff co-tenant cannot have partition of property held adversely to him is followed in equity, but with certain qualifications. Where the questions are such as belong to a court of equity, there is no reason, after having assumed jurisdiction, to suspend the proceedings short of complete justice. Thus, a court of equity has exclusive jurisdiction to determine the validity of an equitable title. If, therefore, jurisdiction has been assumed for this purpose, the court may proceed to determine the whole controversy, including the awarding of a partition, notwithstanding the adverse claim of the defendant.⁶⁸ Equity having acquired jurisdiction

⁶⁶ *Florence v. Hopkins*, 46 N. Y. 186; *Beebe v. Griffing*, 14 N. Y. 238; *Wommack v. Whitmore*, 58 Mo. 448.

⁶⁷ *McMath v. De Bardelaben*, 75 Ala. 68; *Hillens v. Brinsfield*, 108 Ala. 605, 18 South. 604; *Godfrey v. Godfrey*, 17 Ind. 6, 79 Am. Dec. 448; *Weston v. Stoddard*, 137 N. Y. 119, 33 Am. St. Rep. 697, 33 N. E. 62, 20 L. R. A. 624; *Barnard v. Pope*, 14 Mass. 434, 7 Am. Dec. 225; *Barker v. Jones*, 62 N. H. 497, 13 Am. St. Rep. 413; *Holloway v. Holloway*, 97 Mo. 628, 10 Am. St. Rep. 339, 11 S. W. 233; *Call v. Barker*, 12 Me. 325; *Miller v. Dennett*, 6 N. H. 109; *Bollo v. Navarro*, 33 Cal. 459; *Griffin v. Griffin*, 33 Ga. 107; *Scarborough v. Smith*, 18 Kan. 399; *Gage v. Reid*, 104 Ill. 509; *McClaskey v. Barr*, 42 Fed. 609.

⁶⁸ *Hosford v. Merwin*, 5 Barb. 62; *Read v. Huff*, 40 N. J. Eq. 229; *Coxe v. Smith*, 4 Johns. Ch. 276; *Welch v. Anderson*, 28 Mo. 293; *Swan v. Swan*, 8 Price, 518; *Hitchcock v. Skinner*, 1 Hoff. Ch. 24; *Satterlee v. Kobbe*, 173 N. Y. 91, 65 N. E. 952; 4 Pom. Eq. Jur., § 1388, at note 3.

to set aside a deed, may go on and determine title and make partition.⁶⁹ Where the jurisdiction of equity was invoked to secure the construction of a will, the court, having secured jurisdiction on that ground, gave a decree for an accounting and a partition in the same proceeding.⁷⁰ The jurisdiction of equity over the partition of personal property being exclusive, and there being no remedy at law by which a dispossessed co-owner of a chattel may regain possession, "a refusal by a court of equity to pass upon an issue of title would be tantamount to a complete failure of justice. Courts of equity, therefore, when partition of personalty is sought, have of necessity departed from the analogies of the law of real estate, and have assumed jurisdiction to determine as well the issue of title as any other issue pertinent to the case."⁷¹

§ 712. **Disputed Title.**—The difficulty under which the complainant labored at law in proving the title, as well of the defendant as of himself is, in equity, obviated by a discovery, and if need be by a reference to a master. The complainant must show title in himself, and such a title as will establish his right, as against the defendant, to a partition.⁷² "Where the complainant's legal title is disputed, courts of equity decline the jurisdiction to try this question; but, in analogy to the case of dower, they

⁶⁹ *Vreeland v. Vreeland*, 49 N. J. Eq. (4 Dick.) 322, 24 Atl. 551; *Carberry v. West Va. & P. R. Co.*, 44 W. Va. 260, 28 S. E. 694.

⁷⁰ *Scott v. Guernsey*, 60 Barb. 178; *Rozier v. Griffith*, 31 Mo. 171; *Dameron v. Jameson*, 71 Mo. 90.

⁷¹ 4 Pom. Eq. Jur., § 1392; *Thompson v. Thompson*, 107 Ala. 163, 18 South. 247; *Smith v. Dunn*, 27 Ala. 315; *Robinson v. Dickey*, 143 Ind. 205, 52 Am. St. Rep. 417, 42 N. E. 679; *Weeks v. Weeks*, 40 N. C. 111, 47 Am. Dec. 358; *Godfrey v. White*, 60 Mich. 443, 1 Am. St. Rep. 537, 27 N. W. 593; *Edwards v. Bennett*, 10 Ired. 363.

⁷² *Agar v. Fairfax*, *supra*; *Jope v. Morshead*, 6 Beav. 213; *Parker v. Gerard*, Amb. 236; *Rich v. Bray*, 37 Fed. 273, 2 L. B. A. 225.

will retain the bill for a reasonable time, until the issue of title has been determined at law.”⁷³ “In several states, courts of equity are authorized by statute to determine questions of title arising in partition suits.”⁷⁴ “If the

73 4 Pom. Eq. Jur., § 1388; *Hillens v. Brinsfield*, 108 Ala. 605, 18 South. 604; *Harrison v. Taylor*, 111 Ala. 317, 19 South. 986; *Landon v. Morris* (Ark.), 86 S. W. 672; *Howard v. Howard*, 21 D. C. 224; *Dinwiddie v. Smith*, 141 Ind. 318, 40 N. E. 748; *Pierce v. Rollins*, 83 Me. 172, 22 Atl. 110; *Fenton v. Steere*, 76 Mich. 405, 43 N. W. 437; *Hoffman v. Beard*, 22 Mich. 59; *Goff v. Cole*, 71 Miss. 46, 13 South. 870; *Hassam v. Day*, 39 Miss. 392, 77 Am. Dec. 684; *Seymour v. Ricketts*, 21 Neb. 240, 31 N. W. 781; *White v. Smith* (N. J. Eq.), 60 Atl. 399; *Ellis v. Feist*, 65 N. J. Eq. 548, 56 Atl. 369; *Slockbower v. Kanouse*, 50 N. J. Eq. 481, 26 Atl. 333; *Wilkin v. Wilkin*, 1 Johns. Ch. 111, 118; *Walker v. Lyon*, 6 App. D. C. 484; *Side v. Brennehan*, 7 App. Div. 273, 40 N. Y. Supp. 3; *Simpson v. Wallace*, 83 N. C. 477; *Nicely v. Boyles*, 23 Tenn. (4 Humph.) 177, 40 Am. Dec. 638; *Hogg v. Beerman*, 41 Ohio St. 81, 52 Am. Rep. 71; *Pillow v. Southwest Va. Imp. Co.*, 92 Va. 144, 53 Am. St. Rep. 804, 23 S. E. 32; *Curran v. Spraul*, 10 Gratt. (Va.) 145; *Morgan v. Mueller*, 107 Wis. 241, 83 N. W. 313; *Hardy v. Mills*, 35 Wis. 141; *Bearden v. Benner*, 120 Fed. 690 (citing Pom. Eq. Jur., § 1388); *Brown v. Cranberry Iron etc. Co.*, 72 Fed. 96, 18 C. C. A. 444; *Sanders v. Devereux*, 60 Fed. 311, 8 C. C. A. 629; *Fuller v. Montague*, 59 Fed. 212, 8 C. C. A. 100; *McCall v. Carpenter*, 59 U. S. (18 How.) 297, 15 L. ed. 389; *Barney v. Baltimore*, 6 Wall. 280, 18 L. ed. 825; *Slade v. Barlow*, L. R. 7 Eq. 296; *Giffard v. Williams*, L. R. 5 Ch. 546; *Bolton v. Bolton*, L. R. 7 Eq. 298, note; *Potter v. Waller*, 2 De Gex & S. 410. To the effect that a bare denial of complainant's title will not oust a court of equity of its jurisdiction, see *Lucas v. King*, 2 Stock. Ch. (10 N. J. Eq.) 280, and *Overton's Heirs v. Woodfolk*, 6 Dana, 374. In the first case, the following language is used: “I do not understand, however, that the bare denial of the complainant's title is any obstacle to the court's proceeding. The defendant must answer the bill, and if he sets up a title adverse to the complainant, or disputes the complainant's title, he must discover his own title, or show wherein the complainant's title is defective. If, when the titles are spread before the court upon the pleadings, the court can see there is no valid legal objection to the complainant's title, there is no reason why the court should not proceed to order the partition.”

74 4 Pom. Eq. Jur., § 1388, note 2; *Street v. Benner*, 20 Fla. 700; *English v. English*, 53 Kan. 173, 35 Pac. 1107; *Gage v. Bissell*, 119 Ill. 298, 10 N. E. 238; *Claughton v. Claughton*, 70

disputed titles are equitable, courts of equity will exercise jurisdiction to settle them, and will then grant final relief by way of partition, under the same bill.⁷⁵ Where the subject-matter of the suit is an equitable estate,⁷⁶ or an incorporeal hereditament,⁷⁷ a partition may be had in equity."

§ 713. **Parties Defendant.**—It is of the first importance to a successful partition that the title to the purparties allotted be free from cloud, and to accomplish this result it is necessary that all persons interested as co-tenants in the estate to be partitioned be made parties. The general rule in equity, as to parties, is that all those must be made parties whose interests in the subject-matter of the suit, and the relief sought, are so bound

Miss. 384, 12 South. 340; *Phillips v. Dorris*, 56 Neb. 293, 76 N. W. 555; *Hogg v. Berryman*, 41 Ohio St. 81, 52 Am. Rep. 71; *Bradley v. Zehner*, 82 Va. 685; *Hill v. Young*, 7 Wash. 33, 34 Pac. 144. In *Deery v. McClintock*, 31 Wis. 202, the court, in answer to the argument that the blending of legal and equitable remedies under the code had abolished the rule that formerly prevailed that a court of equity could not try title, said: "A court of equity is not now, any more than it formerly was, the proper forum in which to try and decide the question of a mere legal title to land and the jurisdiction must still be refused. . . . Although the distinctions between actions at law and suits in equity, heretofore existing, are abolished, yet this only relates to the forms of actions, and does not touch or affect their inherent qualities and differences, which, for the nature of things, are unchanged and unchangeable." But see *Morenhout v. Higuera*, 32 Cal. 293.

⁷⁵ *Crosier v. McLaughlin*, 1 Nev. 348; *Leverton v. Waters*, 7 Cold. 20; *Ross v. Cobb*, 48 Ill. 111; *Foust v. Moorman*, 2 Ind. 17; *Carter v. Taylor*, 3 Head, 30; *Obert v. Obert*, 10 N. J. Eq. 98; *Longwell v. Bentley*, 23 Pa. St. 99; *Read v. Huff*, 40 N. J. Eq. 233; *Hayes's Appeal*, 123 Pa. St. 110, 16 Atl. 600; *Lynch v. Lynch*, 18 Neb. 586, 20 N. W. 390; 4 Pom. Eq. Jur., § 1388, at note 3; see, also, *ante*, § 711.

⁷⁶ *Hitchcock v. Skinner*, Hoff. Ch. 21; *Aspen M. & S. Co. v. Rucker*, 28 Fed. 220.

⁷⁷ *Bailey v. Sisson*, 1 R. I. 233; *Clark v. Stewart*, 56 Wis. 154, 14 N. W. 54; 4 Pom. Eq. Jur., § 1388, at note 5; see, also, *ante*, § 707.

Equitable Remedies, Vol. II—76

up with that of the other parties, that their legal presence as parties to the proceeding is an absolute necessity, without which the court cannot proceed. All co-tenants, therefore, of the estate sought to be partitioned must be made parties, as they are persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without affecting that interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience.⁷⁸ The rule is confined to the co-owners of the particular estate before the court, and does not, in the absence of statutory modifications, extend to persons having other estates in the same property, although they may be made parties. Thus, partition may be had of a particular estate, as for life or for years, although the owners of the remainder or reversion are not parties.⁷⁹ There may be a partition of equitable estates without the presence of those in whom the legal title is vested,⁸⁰ or of legal estates without bringing before the court the owners of the equitable interests.⁸¹ While the co-tenants

78 *Barney v. Baltimore City*, 6 Wall. 280, 18 L. ed. 825; *Shields v. Barrow*, 17 How. 130, 15 L. ed. 158; *Hill v. Den*, 54 Cal. 6; *Candy v. Stradley*, 1 Del. Ch. 113; *Milligan v. Poole*, 35 Ind. 64; *Borah v. Archers*, 7 Dana (Ky.), 176; *Holman v. Gill*, 107 Ill. 467; *Kester v. Stark*, 19 Ill. 329; *Batterton v. Chiles*, 12 B. Mon. 354, 54 Am. Dec. 539; *Taylor v. King*, 32 Mich. 42; *Dameron v. Jameson*, 71 Mo. 97; *Burhans v. Burhans*, 2 Barb. Ch. 407; *Lancaster v. Seay*, 6 Rich. Eq. 111; *Pearson v. Carlton*, 18 S. C. 47; *Compton v. Matthews*, 3 La. 128, 22 Am. Dec. 167; *Cornish v. Gest*, 2 Cox, 27; *Brashear v. Macy*, 3 J. J. Marsh. 89; *Braker v. Devereaux*, 8 Paige, 513; *Anonymous*, 3 Swanst. 139, note.

79 *Gaskell v. Gaskell*, 6 Sim. 643; *Wills v. Slade*, 6 Ves. 498; *Woodworth v. Campbell*, 5 Paige, 518; *Canfield v. Ford*, 28 Barb. 342; *Heaton v. Dearden*, 16 Beav. 147.

80 *Wotten v. Copeland*, 7 Johns. Ch. 140; *Selden v. Vermilya*, 2 Sandf. 577. In *Hunter v. Brown*, 7 B. Mon. 284, it is suggested that the owners of the legal title should be made parties.

81 *Sebring v. Mersereau*, 9 Cow. 344; *Harwood v. Kirby*, 1 Paige, 469; *Low v. Holmes*, 17 N. J. Eq. 148.

of the estate sought to be partitioned are the only necessary parties, it is frequently desirable, in order to adjust in one proceeding all the rights involved, to make the owners of other estates parties; and it is the virtue of equity that it can thus effect a partition of various interests.⁸² As only those who are parties to the suit at the time the decree is made are bound thereby, it is essential, except where survivorship applies, in case of the death of a co-tenant, during the pendency of the proceeding, to bring in his heirs or successors.⁸³ The grantee or assignee of a co-tenant's share, whether by metes and bounds or as an undivided moiety, is a necessary party.⁸⁴ The purchaser of joint property, or of an interest therein, pending a partition need not be brought in as defendant, provided the suit is prosecuted with reasonable diligence.⁸⁵

§ 714. **Persons Under Disability.**—As the jurisdiction of the court in partition suits does not depend upon the

⁸² *Lord Brook v. Lord Hertford*, 2 P. Wms. 518; *Hobson v. Sherwood*, 4 Beav. 184; *Duke v. Hague*, 107 Pa. St. 57; *Gayle v. Johnston*, 80 Ala. 395; *Black v. Washington*, 65 Miss. 60, 3 South. 140; *Hill v. Reno*, 112 Ill. 154, 54 Am. Rep. 222; *Calland v. Conway*, 14 R. I. 9.

⁸³ *Requa v. Holmes*, 16 N. Y. 198, 26 N. Y. 347; *Pearson v. Carlton*, 18 S. C. 47; *Whitton v. Whitton*, 38 N. H. 127, 75 Am. Dec. 163; *Chalon v. Walker*, 7 La. Ann. 477; *Ewald v. Corbett*, 32 Cal. 499; *Lyon v. Register*, 36 Fla. 273, 18 South. 589.

⁸⁴ *Gates v. Salmon*, 35 Cal. 588, 95 Am. Dec. 139; *Sutter v. San Francisco*, 36 Cal. 115; *Whitton v. Whitton*, 38 N. H. 127, 75 Am. Dec. 163; *Holbrook v. Bowman*, 62 N. H. 313; *Harlan v. Langham*, 69 Pa. St. 237; *Puckett v. McDaniel*, 8 Tex. Civ. App. 630, 28 S. W. 360. *Contra*, *Broughton v. Howe*, 6 Vt. 267; *Barnes v. Lynch*, 151 Mass. 510, 21 Am. St. Rep. 470, 24 N. E. 783; *Jackson v. Myers*, 14 Johns. 354.

⁸⁵ *Partridge v. Luce*, 36 Me. 16; *Coble v. Clapp*, 1 Jones Eq. 173; *Hart v. Steedman*, 98 Mo. 452, 11 S. W. 993; *Edwards v. Dykeman*, 95 Ind. 509; *Hawes v. Orr*, 10 Bush, 431; *Bybee v. Summers*, 4 Or. 354. As to parties defendant and especially the legislation of the various states on that subject, see *Pomeroy, Code Remedies*, §§ 373-377.

character of the co-tenants, but upon the fact that property is held in co-tenancy, the right of co-owners to enjoy their estates in severalty is not destroyed because some of their number are under a legal disability. While equity is especially solicitous for the interests of infants, it does not regard the infancy of one of the parties as sufficient reason, in itself, for denying partition. Infant co-owners must, therefore, be made parties, and if they are brought before the court by appropriate process and duly represented, which matters now are extensively regulated by statute, the decree of partition is binding upon them.⁸⁶ A court of equity will, however, always relieve an infant from the effect of a partition if it appears that his interests have suffered by reason of fraud and collusion.⁸⁷ The rule requiring all co-tenants to be made parties extends to *femes covert*, and their interests may be effectually bound by the decree, unless it is clear that they acted through mistake or in ignorance of their rights.⁸⁸ Lunatics and others suffering from mental incapacity, so long as they are vested with a title to a moiety of the estate sought to be partitioned, are necessary parties.⁸⁹

§ 715. **Holders of Particular Estates and Interests.**—The holder of an encumbrance or lien, created by mortgage, judgment, or otherwise, upon the undivided interest of

⁸⁶ *Coker v. Pitts*, 37 Ala. 693; *Hite v. Thompson*, 18 Mo. 461; *Richards v. Richards*, 17 Ind. 636; *Shaw v. Gregoire*, 41 Mo. 413. See, also, note 62, "Who is Entitled to Partition."

⁸⁷ *Long v. Mulford*, 17 Ohio St. 484, 93 Am. Dec. 638; *Merritt v. Shaw*, 15 Grant Ch. (A. C.) 323.

⁸⁸ *Pillsbury v. Dugan's Admr.*, 9 Ohio, 120, 34 Am. Dec. 427; *Short v. Prettyman*, 1 Houst. (Del.) 334; *Disbrow v. Folger*, 5 Abb. Pr. 54; *Crenshaw v. Creek*, 52 Mo. 100; *Horsfall v. Ford*, 5 Bush (Ky.), 644.

⁸⁹ *Bryant's Heirs v. Stearns*, 16 Ala. 306; *Gorham v. Gorham*, 3 Barb. Ch. 41; *Hollingsworth v. Sidebottom*, 8 Sim. 620.

a co-tenant, is not, in the absence of statutory requirement, a necessary party to a bill for partition. Upon partition, the encumbrance is transferred from the estate in common to the estate in severalty of the tenant against whose moiety the lien was a charge.⁹⁰ Even where partition is by sale, encumbrancers are not necessary parties, unless made so by statute. As the power of courts of equity to order sale in partition proceedings is wholly statutory, the statutes conferring such power usually contain provisions for bringing lien-holders before the court, ascertaining the amount of the liens, and preserving the security by attaching the lien to the co-tenant's share in the proceeds.⁹¹

The wife of a tenant in common is not a necessary party to a suit for partition. If an actual partition is made, her right of dower will attach to the share allotted in severalty to her husband. This results as a matter of course, without any decree or order of the court, and without her being before the court as a

⁹⁰ *Rochester Loan & Bank Co. v. Morse*, 181 Ill. 64, 54 N. E. 628; *East Coast Cedar Co. v. People's Bank*, 111 Fed. 446; *Martin v. Martin*, 95 Va. 26, 27 S. E. 810; *Sebring v. Mersereau*, 9 Cow. 344; *Harwood v. Kirby*, 1 Paige, 469; *Low v. Holmes*, 17 N. J. Eq. 148; *Speer v. Speer*, 14 N. J. Eq. 240; *Thurston v. Minke*, 32 Md. 571; *Stewart v. Allegheny Nat. Bank*, 101 Pa. St. 342; *Jackson v. Pierce*, 10 Johns. 417; *Torrey v. Cook*, 116 Mass. 163. In *Colton v. Smith*, 11 Pick. 314, 22 Am. Dec. 375, it is stated that a mortgagee is not bound by a partition to which he was not a party. And in *Whitton v. Whitton*, 38 N. H. 127, 75 Am. Dec. 163, the court said: "It may well be doubted if a mortgagee would be bound by a partition in equity, where he is not made a party, and by the partition his security was destroyed or impaired."

⁹¹ *Arnold v. Butterbaugh*, 92 Ind. 403; *Westervelt v. Haff*, 2 Sandf. Ch. 101; *Church v. Church*, 3 Sandf. Ch. 437; *Loomis v. Riley*, 24 Ill. 310; *Treacy v. Ellis*, 45 App. Div. 492, 61 N. Y. Supp. 600; *Succession of Viard*, 106 La. Ann. 73, 30 South. 246; *Lancaster v. Wolff*, 23 Ky. Law Rep. 233, 62 S. W. 717. See *Pomeroy, Code Remedies*, § 254, and the various state statutes.

party.⁹² Nor is the widow of a deceased tenant in severalty a necessary party in a partition proceeding among the heirs, since she is not a co-tenant with them.⁹³ Inasmuch as a husband cannot, without the wife's consent, cut off her inchoate right of dower, it is held that in all cases where a sale of the property will probably be necessary, the wife should be made a party, so that the purchaser's interest in the premises will not be charged with her contingent claim of dower.⁹⁴ On the other hand, it is said that the wife's right of dower subsists in virtue of the seisin of her husband. The liability to be divested by sale in partition is an incident which the law affixes to the seisin of all joint estates, and the inchoate right of the wife is subject to the same incident.⁹⁵ By statute in many states, the wife may be made a party, and a decree entered ordering a sale and an award to her of a part of the proceeds in lieu of dower. The husband of a co-tenant is a necessary party defendant in a partition proceeding, brought during her life or after her death, for the division of lands held by her as co-tenant.⁹⁶

⁹² *Matthews v. Matthews*, 1 Edw. Ch. 567; *Wilkinson v. Parish*, 3 Paige, 658; *Haxsie v. Ellis*, 4 R. I. 124; *Davis v. Lang*, 153 Ill. 175, 38 N. E. 635.

⁹³ *Bradshaw v. Callaghan*, 5 Johns. 80; *McClintic v. Manns*, 4 Munf. (Va.) 328. But see *Curtis v. Snead*, 12 Gratt. (Va.) 264.

⁹⁴ *Greiner v. Klein*, 28 Mich. 17; *Wilkinson v. Parish*, 3 Paige, 658; *Green v. Putnam*, 1 Barb. 506; *Matthews v. Matthews*, 1 Edw. Ch. 567; *Jackson v. Edwards*, 7 Paige, 411; *Rosenkrans v. White*, 7 Lans. 486.

⁹⁵ *Lee v. Lindell*, 22 Mo. 202, 64 Am. Dec. 262; *Warren v. Twilley*, 10 Md. 39; *Fink's Appeal*, 130 Pa. St. 256, 18 Atl. 621; *Weaver v. Gregg*, 6 Ohio St. 547, 67 Am. Dec. 355; *Haggerty v. Wagner*, 148 Ind. 625, 48 N. E. 366, 39 L. R. A. 384. To effect that wife claiming a homestead is necessary party, see *De Uprey v. De Uprey*, 27 Cal. 332, 87 Am. Dec. 81. See, also, *Wheelock v. Overshiner*, 110 Mo. 100, 19 S. W. 640.

⁹⁶ *Pillsbury v. Dugan*, 9 Ohio, 120, 34 Am. Dec. 427; *Foster v. Duggan*, 8 Ohio, 106, 31 Am. Dec. 432; *Bogert v. Bogert*, 53 Hun, 629, 5 N. Y. Supp. 893. But statutory change should be noted.

While an outstanding lease is no obstacle to a partition of the reversion among the co-owners, a lessee of a moiety or of the whole of the estate must be made a party defendant in order to affect his interest.⁹⁷

§ 716. **Estates of Persons not in Being.**—As has already been shown, the jurisdiction of equity in partition suits is not limited to the division of present estates in possession, but extends to the estates of remainder-men and reversioners, and other owners of future and contingent interests. It is also within the established jurisdiction of equity to bind the estates of persons not in being who may become co-owners of property. This is accomplished by means of the principle of virtual representation, by which the tenant for life or of the inheritance, being brought before the court, is regarded as competent to represent both his own interests and the interests of all those who may by their subsequent birth acquire interests in the estate.⁹⁸ In order to bind such interests the bill should set out specifically the various estates involved, so that the court may in its decree protect the rights of persons not in being by substituting in place of the land the fund derived from its sale and preserving it to the extent necessary to satisfy such future interests as they arise.⁹⁹

⁹⁷ Willard v. Willard, 145 U. S. 116, 12 Sup. Ct. 818, 36 L. ed. 644; Haenssler v. Missouri Iron Co., 110 Mo. 188, 33 Am. St. Rep. 431, 19 S. W. 75, 16 L. R. A. 220; Thurston v. Minke, 32 Md. 575; Pleak v. Chambers, 7 B. Mon. 570; Jordan v. McNulty, 14 Colo. 280, 23 Pac. 460.

⁹⁸ Giffard v. Hort, 1 Schoales & L. 407; Hopkins v. Hopkins, 1 Atk. 590; Reinders v. Koppelman, 68 Mo. 482, 30 Am. Rep. 802; Brevoort v. Brevoort, 70 N. Y. 136; Cheesman v. Thorne, 1 Edw. Ch. 629; Noble v. Cromwell, 26 Barb. 475; Faulkner v. Davis, 18 Gratt. 651, 98 Am. Dec. 698; Mead v. Mitchell, 17 N. Y. 210, 72 Am. Dec. 455; Goodess v. Williams, 2 Younge & C. 595. To the effect that only a person having an estate of inheritance is a competent representative, see Downin v. Sprecher, 35 Md. 478.

⁹⁹ Barnes v. Luther, 77 Hun, 234, 28 N. Y. Supp. 400; Fox v. Fee,

§ 717. **Incidental Relief in Equity—In General.**—It is characteristic of equity in matters of partition that not only does it afford a more advantageous and adequate relief than is obtainable at law, but it also takes into consideration the various and diverse equities of the respective parties growing out of their ownership of property in common, and adjusts and disposes of them upon broad principles of fairness and equality.¹⁰⁰ This incidental relief extends only to such equities as arise out of the relation of the parties to the joint property, but this may include the disposition of matters preliminary to final partition and to the management of the property pending the partition proceedings.¹⁰¹ Thus, a deed or devise may be construed,¹⁰² or a mortgage reformed and foreclosed and the manner of its payment be prescribed,¹⁰³ or deeds may be corrected and

24 App. Div. 314, 49 N. Y. Supp. 292; *Monarque v. Monarque*, 80 N. Y. 326.

In most of the states, a method is provided by statute for binding, in partition proceedings, the interests of unknown owners of the property before the court. If the statutory provisions have been strictly followed, the decree of partition will be binding upon all unknown owners. For a discussion of such legislation, see *Cook v. Allen*, 2 Mass. 467; *Nash v. Church*, 10 Wis. 311, 78 Am. Dec. 678; *Herr v. Herr*, 5 Pa. St. 428, 47 Am. Dec. 416; *Lenahan v. College of St. Francis Xavier*, 51 App. Div. 535, 64 N. Y. Supp. 868.

¹⁰⁰ *Dall v. The Confidence Silver Min. Co.*, 3 Nev. 535, 93 Am. Dec. 419; *Packard v. King*, 3 Colo. 211; *Milligan v. Poole*, 35 Ind. 64; *Miller v. Peters*, 25 Ohio St. 270; *Storey v. Johnson*, 1 Younge & C. 538; *Bryan v. Bryan*, 61 N. J. Eq. 45, 48 Atl. 341; *Dorman v. Dorman*, 187 Ill. 154, 79 Am. St. Rep. 210, 58 N. E. 235; *Buchanan v. Buchanan*, 38 S. C. 410, 17 S. E. 218; *Kalteyer v. Wipff*, 92 Tex. 673, 52 S. W. 63. But see *Wamesit etc. Co. v. Sterling Mills*, 158 Mass. 435, 33 N. E. 503.

¹⁰¹ *Stuart's Heirs v. Coalter*, 4 Rand. (Va.) 74, 15 Am. Dec. 731; *Wolcott v. Robbins*, 26 Conn. 236.

¹⁰² *Simmons v. Hendricks*, 8 Ired. Eq. (N. C.) 85, 55 Am. Dec. 439; *Leavitt v. Palmer*, 3 N. Y. 19, 51 Am. Dec. 333; *Willis v. Henderson*, 5 Ill. 13, 38 Am. Dec. 120; *Helms v. Austin*, 116 N. C. 751, 21 S. E. 556.

¹⁰³ *Conyers v. Mericles*, 75 Ind. 443.

conveyances ordered.¹⁰⁴ If the maintenance of the property and the preservation of the rights and interests of the parties require it, the court may appoint a receiver pending partition.¹⁰⁵ When a tenant in possession is making an unusual or improper use of the premises to their detriment and waste, the court may, if such tenant be pecuniarily irresponsible, grant an injunction, either in the suit for partition or in an independent proceeding, to stay waste.¹⁰⁶ Equity will also enjoin the prosecution of a partition at law when such interference becomes necessary to protect some of the co-tenants from fraud or wrong, or to secure them some clear right which a court of law, from the manner of proceeding before it, cannot secure.¹⁰⁷ If it can be done without prejudice, a partial partition may be ordered by setting off to the complainant his moiety and leaving the other co-tenants to continue their ownership in common.¹⁰⁸

§ 718. *Owerty of Partition.*—"In the original jurisdiction of equity the partition was effected by means of

104 *Rann v. Rann*, 95 Ill. 433. Equities growing out of advancements will be settled: *Comer v. Shehee*, 129 Ala. 588, 87 Am. St. Rep. 78, 30 South. 95; *Poulter v. Poulter*, 193 Ill. 641, 61 N. E. 1056.

105 *Williams v. Jenkins*, 11 Ga. 598; *Weeks v. Weeks*, 106 N. Y. 626, 13 N. E. 96; *Weise v. Welsh*, 30 N. J. Eq. 431; *Low v. Holmes*, 17 N. J. Eq. 150; *Varnum v. Leek*, 65 Iowa, 751, 23 N. W. 151. See volume I, chapter III, as to appointment of such receivers.

106 *Hawley v. Clows*, 2 Johns. Ch. 122; *Obert v. Obert*, 5 N. J. Eq. 397; *Twort v. Twort*, 16 Ves. 128; *Kennedy v. Scovill*, 12 Conn. 327; *Rainey v. H. C. Frick Coke Co.*, 73 Fed. 389; *Bailey v. Hobson*, L. R. 5 Ch. 180. Tenant must be pecuniarily irresponsible: *Coffin v. Loper*, 25 N. J. Eq. 443; *Lewis v. Christian*, 40 Ga. 188.

107 *Hall v. Piddock*, 21 N. J. Eq. 312; *Gash v. Ledbetter*, 6 Ired. Eq. (N. C.) 185; *Wilkinson v. Stuart*, 74 Ala. 198.

108 *Abbott v. Berry*, 46 N. H. 369; *Upham v. Bradley*, 17 Me. 427; *Page v. Webster*, 8 Mich. 263, 77 Am. Dec. 446; *Shull v. Kennon*, 12 Ind. 35. But see *Robertson v. Robertson*, 2 Swan, 199; *Handy v. Leavitt*, 3 Edw. Ch. 229; *Hobson v. Sherwood*, 4 Beav. 184.

mutual conveyances; and where the land was incapable of exact or fair division, the court had power to compensate for the inequality by awarding what was known as 'owelty of partition,' being a pecuniary compensation or charge," upon the more valuable share, by way of rent, servitude, or easement, in favor of the less valuable one.¹⁰⁹ This charge rests upon the land alone and not upon the person of the co-tenant, and may be enforced forthwith by the appropriate proceedings *in rem*.¹¹⁰ It constitutes an encumbrance in the nature of a lien upon the moiety against which it is assigned, and follows the land into the hands of third persons, and is prior to other encumbrances existing against such moiety.¹¹¹ Unless made so by the decree, the payment of owelty is not a condition precedent to the vesting of the title to the portion upon which it rests.¹¹² Owelty awarded to a co-tenant whose share is encumbered

¹⁰⁹ 4 Pom. Eq. Jur., § 1389; *Updike v. Adams*, 24 R. I. 220, 96 Am. St. Rep. 711, 52 Atl. 991 (citing Pom. Eq. Jur., § 1389); *Martin v. Martin*, 95 Va. 26, 27 S. E. 810 (citing Pom. Eq. Jur., § 1389); *Powell v. Weathington*, 124 N. C. 40, 32 S. E. 380; *Fenton v. Miller*, 116 Mich. 45, 72 Am. St. Rep. 502, 74 N. W. 384; *Ex parte Smith*, 134 N. C. 495, 47 S. E. 16; *Earl of Clarendon v. Hordby*, 1 P. Wms. 446; *Turner v. Morgan*, 8 Ves. 143; *Story v. Johnson*, 2 Younge & C. 586; *Horncastle v. Charlesworth*, 11 Sim. 315; *Mole v. Mansfield*, 15 Sim. 41; *Smith v. Smith*, 10 Paige, 470; *Larkin v. Mann*, 2 Paige, 27; *Phelps v. Green*, 3 Johns. Ch. 302; *Haywood v. Judson*, 4 Barb. 228; *Norwood v. Norwood*, 4 Har. & J. (Md.) 112; *Warfield v. Warfield*, 5 Har. & J. 459; *Cox v. McMullin*, 14 Gratt. 82; *Wynne v. Tunstall*, 1 Dev. Eq. 23; *Graydon v. Graydon*, McMull. Eq. 63; *Oliver v. Jernigan*, 46 Ala. 41; *Cheatham v. Crews*, 88 N. C. 38; *Field v. Leiter*, 117 Ill. 341, 7 N. E. 279.

¹¹⁰ *Baltimore & O. R. R. Co. v. Trimble*, 51 Md. 99; *Waring v. Wadsworth*, 80 N. C. 345; *Turpin v. Kelly*, 85 N. C. 399.

¹¹¹ *Sutton v. Edwards*, 5 Ired. Eq. 425; *Dobbin v. Rex*, 106 N. C. 444, 11 S. E. 260; *McCandless's Appeal*, 13 Pa. St. 432; *Davis v. Norris*, 8 Pa. St. 125; *Lacy v. Gard*, 60 Ill. App. 72.

¹¹² *Archer v. Munday*, 17 S. C. 84; *Burris v. Gooch*, 5 Rich. (S. C.) 1.

should be applied to the payment of the encumbrance.¹¹³

§ 719. **Improvements.**—In making partition, equity will take into consideration the fact that one co-tenant has occupied a portion of the common property and has enhanced its value by making useful improvements thereon, and will, so far as it can do so consistently with an equitable allotment, assign to the tenant making such improvements the land on which they stand, or so much thereof as represents his proportion.¹¹⁴ In some cases, however, either by reason of the nature of the property or the location of the improvements, it will be impossible to apportion the land in such a way as to give a co-tenant the benefit of his improvements. In such a contingency the general rule seems to be, that a co-tenant, acting in good faith and for the purpose of honestly bettering the property, and not for the purpose of embarrassing his co-tenants, or encumbering the estate, or hindering partition, will be entitled to compensation to the extent that his substantial and useful improvements have added to the value of the common property.¹¹⁵ It does not appear to be necessary to show

¹¹³ *Green v. Arnold*, 11 R. I. 364, 23 Am. Rep. 466.

¹¹⁴ *Ford v. Knapp*, 102 N. Y. 140, 55 Am. Rep. 782, 6 N. E. 283; *Kelsey's Appeal*, 113 Pa. St. 119, 57 Am. Rep. 444, 5 Atl. 447; *Dagan v. Mayor*, 70 Md. 1, 16 Atl. 501; *Wilkinson v. Stuart*, 74 Ala. 198; *Elrod v. Keller*, 89 Ind. 382; *Emeric v. Alvarado*, 90 Cal. 444, 27 Pac. 356; *Robertson v. Robertson*, 2 Swan, 199; *Handy v. Leavitt*, 3 Edw. Ch. 229; *Withers v. Thompson*, 4 T. B. Mon. (Ky.) 335; *Hart v. Hawkins*, 3 Bibb (Ky.), 510, 6 Am. Dec. 666; *Pope v. Whitehead*, 68 N. C. 199; *Town v. Needham*, 3 Paige, 545, 24 Am. Dec. 246; *Kurtz v. Hibner*, 55 Ill. 514, 8 Am. Rep. 665; *Donnor v. Quartermas*, 90 Ala. 164, 24 Am. St. Rep. 778, 8 South. 715; 4 Pom. Eq. Jur., § 1389, note 3, and cases cited. No compensation for improvements pending partition: *Mayer v. Haggerty*, 138 Ind. 628, 38 N. E. 42.

¹¹⁵ *Hall v. Piddock*, 21 N. J. Eq. 314; *Swan v. Swan*, 8 Price, 518; *Green v. Putnam*, 1 Barb. 500; *Conklin v. Conklin*, 3 Sandf. Ch. 64;

the assent of his co-tenants to such improvements, or a promise on their part to pay their portion of the cost, nor a previous request by him and a refusal by them to join in the work.¹¹⁶ Against the award for improvements may be set off such sums for use and occupation as may, on an accounting, be found chargeable to the tenant making the improvements.¹¹⁷

§ 720. **Accounting.**—There is hardly any question arising out of the relation of the parties to the common property which a court of equity may not determine incidentally in a suit for partition, for the purpose of doing complete justice and preventing multiplicity of litigation. A bill for partition may include a prayer for an accounting against the defendants and the defend-

St. Felix v. Rankin, 3 Edw. Ch. 323; Brookfield v. Williams, 2 N. J. Eq. 341; Obert v. Obert, 5 N. J. Eq. 397; Sneed's Heirs v. Atherton, 6 Dana, 276, 32 Am. Dec. 70; Borah v. Archers, 7 Dana, 176; Respass v. Breckenridge's Heirs, 2 A. K. Marsh. 581; Dean v. O'Meara, 47 Ill. 120; Martindale v. Alexander, 26 Ind. 104, 87 Am. Dec. 458; Curtis v. Poland, 66 Tex. 511, 2 S. W. 39; Scantlin v. Allison, 32 Kan. 376, 4 Pac. 618; Buck v. Martin, 21 S. C. 590, 53 Am. Rep. 702. Compensation depends upon increased value of premises: Williman v. Holmes, 4 Rich. Eq. (S. C.) 476; Moore v. Williamson, 10 Rich. Eq. 328, 73 Am. Dec. 93; Dean v. O'Meara, 47 Ill. 120; Kurtz v. Hibner, 55 Ill. 514, 8 Am. Rep. 665. Improvements must be useful: Hitchcock v. Skinner, Hoff. Ch. 21. For suggested limitations on right to compensation, see Scott v. Guernsey, 48 N. Y. 123; Ormond v. Martin, 37 Ala. 606; Jones v. Johnson, 28 Ark. 211; Elrod v. Keller, 89 Ind. 382; Ward v. Ward, 40 W. Va. 611, 52 Am. St. Rep. 911, 29 L. R. A. 449, 21 N. E. 746 (annotated case).

¹¹⁶ Green v. Putnam, 1 Barb. 507. To the effect that right to compensation depends upon consent of co-tenants: Rowan v. Reed, 19 Ill. 21; Baird v. Jackson, 98 Ill. 78; Lewis v. Sellick (Tex.), 7 S. W. 673; Jones v. Johnson, 28 Ark. 211; Husband v. Aldrich, 135 Mass. 317; Allen v. Hall, 50 Me. 253; Calhoun v. Stark, 13 Tex. Civ. App. 60, 35 S. W. 410.

¹¹⁷ Sutton v. Sutton, 26 S. C. 33, 1 S. E. 19; Pickering v. Pickering, 63 N. H. 468, 3 Atl. 744; Luck v. Luck, 113 Pa. St. 256, 6 Atl. 142; Teasdale v. Sanderson, 33 Beav. 534.

ants may by cross-bill have an accounting against the complainant.¹¹⁸ Thus, if one of the joint owners or owners in common has received more than his share of the rents and profits, or has occupied the common property to the exclusion of the other co-tenants, the court will direct an accounting for the purpose of decreeing a reimbursement or the payment of rent for use and occupation.¹¹⁹ Where there are encumbrances resting upon the property, the court will ascertain their extent and validity and apportion them according to the rights of the parties,¹²⁰ or in case a co-tenant has paid a common encumbrance he may, in a suit for partition, enforce contribution from his co-tenants.¹²¹ If one tenant has committed waste upon the common property, the court may assign to him the wasted portion or decree compensation to be made for such waste.¹²² Reimbursement may be had for expenses incurred in recovering or preserving the joint property.¹²³

118 *Backler v. Farrow*, 2 Hill Eq. 111; *Wills v. Slade*, 6 Ves. 498; *Obert v. Obert*, 10 N. J. Eq. 98; *Tuckerfield v. Buller*, 1 Dick. 241.

119 *Lorimer v. Lorimer*, 5 Madd. 363; *Hill v. Fulbrook*, Jacob, 574; *Story v. Johnson*, 2 Younge & C. 586; *Leach v. Beattie*, 33 Vt. 195; *Hitchcock v. Skinner*, Hoff. Ch. 21; *Early v. Friend*, 16 Gratt. 21, 78 Am. Dec. 649; *Carter's Ex. v. Carter*, 5 Munf. 108; *Rozier v. Griffith*, 31 Mo. 171; *Fry v. Payne*, 82 Va. 759, 1 S. E. 197; *Arnett v. Munnerlyn*, 71 Ga. 14; *Lowe v. Burke*, 79 Ga. 164, 3 S. E. 449; *Nash v. Simpson*, 78 Me. 142, 3 Atl. 53; *Annely v. De Saussure*, 26 S. C. 497, 4 Am. St. Rep. 725, 2 S. E. 490; *Bridgeford v. Barbour*, 80 Ky. 529; *Davidson v. Thompson*, 22 N. J. Eq. 84; *Scantlin v. Allison*, 32 Kan. 379, 4 Pac. 618; 4 Pom. Eq. Jur., § 1389, at note 2.

120 *Kingsbury v. Buckner*, 70 Ill. 514; *Townshend v. Townshend*, 1 Abb. N. C. (N. Y.) 81.

121 *Titsworth v. Stout*, 49 Ill. 78, 95 Am. Dec. 577; *Illinois etc. Co. v. Bonner*, 75 Ill. 315.

122 *Polhemus v. Emson*, 30 N. J. Eq. 405; *Backler v. Farrow*, 2 Hill Eq. 111; *Fenton v. Miller*, 116 Mich. 45, 72 Am. St. Rep. 502, 74 N. W. 384 (no allowance for insurance).

123 *McMeekin v. Brummet*, 2 Hill Eq. 643; *McDearman v. McClure*, 31 Ark. 559.

§ 721. **Mode of Partition.**—The method of making partition is now generally prescribed by statute. While varying in the different states, it is in substance the procedure originally followed in equity. The court first decides whether the parties are co-tenants and are entitled to partition. If so, the moiety of each co-tenant is ascertained by the court with the aid of a master.¹²⁴ An interlocutory decree is then entered directing a commission to issue to certain persons to make the partition in the manner prescribed in the decree, and directing the parties to execute the necessary conveyances. After being duly sworn, the commissioners examine the premises, give notice to all parties interested of the time and place of making the partition, and then proceed to set off the shares in the proportion stated in the decree. A full report of all their doings is certified to the court.¹²⁵ Unless it appears that the commissioners have acted on wholly erroneous principles or have made a grossly unequal and unjust division,¹²⁶ a final decree is entered confirming the report. Under modern procedure, if the commissioners find an actual partition impracticable, they may so report and advise a sale.¹²⁷ The decree of partition and the confirmation of the report of the commissioners did not, according to the original equity practice, transfer or convey the title. This could only be done by act of the parties. Formerly, therefore, every partition in equity

124 *Calmady v. Calmady*, 2 Ves. Jr. 568; *Agar v. Fairfax*, 17 Ves. 542; *Phelps v. Green*, 3 Johns. Ch. 304; *Ham v. Ham*, 39 Me. 218 (commission cannot ascertain moieties).

125 *Daniell's Ch. Pr.*, pp. *1150-1164.

126 *Hay v. Estell*, 19 N. J. Eq. 135; *Story v. Johnson*, 1 Younge & C. 538; *Morrill v. Morrill*, 5 N. H. 329; *Haulenbeck v. Cronkright*, 26 N. J. Eq. 159; *Livingston v. Clarkson*, 4 Edw. Ch. 597; *Lister v. Lister*, 3 Younge & C. Ch. 544; *Doubleday v. Newton*, 9 How. Pr. 72.

127 *Tucker v. Tucker*, 19 Wend. 226; *Steedman v. Weeks*, 2 Strob. Eq. 148, 49 Am. Dec. 660; *Lake v. Jarrett*, 12 Ind. 395.

included a decree that the parties make mutual conveyances to effectually carry out the allotments of the commissioners.¹²⁸ In some states the court is authorized to appoint a commissioner to execute conveyances in the names of the parties. At the present time, the general rule, either by statute or judicial decision, is that mutual conveyances are not necessary. The partition is regarded as consummated and the titles vested in severalty to the respective shares by virtue of the final decree.¹²⁹

§ 722. Partition by Means of Sale.—“On account of the difficulty of making an equable apportionment and division of the land, it might sometimes be expedient for the court to order a sale of the property and a division of the proceeds. By the original equitable jurisdiction, independent of any statute, if all the parties *sui juris* were willing, the court had power to decree a sale; and this, even though infants might be among the parties interested.¹³⁰ But where one of the parties *sui juris* refused his consent, the court had no option but to proceed with the ordinary mode of partition.¹³¹ This restriction has in England been removed by a modern statute.¹³² In the United States an unqualified power

¹²⁸ Gay v. Parpart, 106 U. S. 689, 1 Sup. Ct. 456, 27 L. ed. 256; Smith v. Moore, 6 Dana, 417; Whaley v. Dawson, 2 Schoales & L. 367; Attorney-General v. Hamilton, 1 Madd. 214; Cartwright v. Pultney, 2 Atk. 380.

¹²⁹ Young v. Cooper, 3 Johns. Ch. 295; Dixon v. Warters, 8 Jones, 451; Swett v. Swett, 49 N. H. 264; Wright v. Marsh, 2 G. Greene (Iowa), 110; Young v. Frost, 1 Md. 403; Street v. McConnell, 16 Ill. 126; Van Orman v. Phelps, 9 Barb. 503. As to effect of decrees in equity under modern statutes, see *ante*, volume I, chapter I.

¹³⁰ Davis v. Turvey, 32 Beav. 554; Hubbard v. Hubbard, 2 Hem. & M. 38; Thackeray v. Parker, 1 N. R. 567.

¹³¹ Griffies v. Griffies, 11 Week. Rep. 943; Wood v. Little, 35 Me. 107; Codman v. Tinkham, 15 Pick. 364; Lyon v. Powell, 78 Ala. 351.

¹³² 31 & 32 Vict., c. 40.

of sale has been conferred on the courts in very many of the states, the power to be exercised whenever it shall appear to the court, independently of the consent of the parties, that a sale would be more beneficial, or less injurious, than an actual partition.¹³³ As between a sale and a partition, however, the courts will favor a partition, as not disturbing the existing form of the inheritance."¹³⁴ A party who desires a sale must assume the burden of showing that a good cause exists therefor, and when the grounds for a sale, which are usually prescribed by statute, are duly established, it, like an actual partition, may be demanded as of right.¹³⁵ The court may order an actual partition of a part of the premises and a sale of the remainder.¹³⁶ The sale is usually conducted by a referee or commissioner appointed by the court, who makes a certified report of all his doings. The court may vacate or confirm the sale, a confirmation of the sale being essential to its valid-

¹³³ *Croston v. Male* (W. Va.), 49 S. E. 136; *Thompson v. Hardman*, 6 Johns. Ch. 436; *McCall's Appeal*, 56 Pa. St. 363; *Matter of Skinner's Heirs*, 2 Dev. & B. Eq. 63; *Steedman v. Weeks*, 2 Strob. Eq. 145, 49 Am. Dec. 660; *Royston v. Royston*, 13 Ga. 425; *Wilson v. Duncan*, 44 Miss. 642; *Higginbottom v. Short*, 25 Miss. 160, 57 Am. Dec. 198; *Graham v. Graham*, 8 Bush, 334; *Welsh v. Freeman*, 21 Ohio St. 402; *Wilson v. Green*, 63 Md. 547; *Marshall v. Marshall*, 86 Ala. 383, 5 South. 475. To effect that power to order sale does not depend upon statute, see *Moore v. Blagge*, 91 Tex. 151, 38 S. W. 979, 41 S. W. 465; *Holley v. Glover*, 36 S. C. 404, 31 Am. St. Rep. 883, 15 S. E. 605, 16 L. R. A. 776.

¹³⁴ 4 Pom. Eq. Jur., § 1390; *Davidson v. Thompson*, 22 N. J. Eq. 83; *Thurston v. Minke*, 32 Md. 571; *Graham v. Graham*, 8 Bush, 334; *Walker v. Lyon*, 6 App. D. C. 484; *Smith v. Trustees etc. of Brookhaven*, 55 N. Y. Supp. 370, 36 App. Div. 386.

¹³⁵ *Windley v. Barrow*, 2 Jones Eq. 66; *Davis v. Davis*, 2 Ired. Eq. 607; *Gregory v. Gregory*, 69 N. C. 522; *Johnson v. Olmstead*, 49 Conn. 517; *Reeves v. Reeves*, 11 Heisk. 669; *Bentley v. Long Dock Co.*, 1 McCartner, 489; *Hartman v. Hartman*, 59 Ill. 103.

¹³⁶ *Conner v. Cox*, 15 Ky. Law Rep. 140, 22 S. W. 605.

ity.¹³⁷ A bidder at a sale, being regarded merely as an offeror, cannot complain if the court refuses confirmation and orders a resale.¹³⁸ The grounds on which a resale will be ordered are various and are no different from those on which other judicial sales may be avoided.¹³⁹ After confirmation, the proceeds are distributed according to the various rights and interests before the court.¹⁴⁰

137 *Hutton v. Williams*, 35 Ala. 503, 76 Am. Dec. 297; *Lloyd v. Lloyd*, 61 Iowa, 243, 16 N. W. 117; *Schwaman v. Truax* (N. Y.), 71 N. E. 464.

138 *Ex parte Bost*, 3 Jones Eq. 483; *Lefevre v. Laraway*, 22 Barb. 173; *Goode v. Crow*, 51 Mo. 214.

139 *Ex parte White*, 82 N. C. 377.

140 *Gillespie v. Allison*, 117 N. C. 512, 23 S. E. 438; *Lythgoe v. Smith*, 140 N. Y. 442, 35 N. E. 646; *Jackson v. Bradhurst*, 16 Misc. Rep. 149, 37 N. Y. Supp. 1068; *Kelly v. Deegan*, 111 Ala. 152, 20 South. 378.

Equitable Remedies, Vol. II—77

CHAPTER XXXV.

BILLS OF PEACE.

ANALYSIS.

§ 723. Bills of peace—Bills *quia timet*—Quieting title.

§ 723. Bills of Peace—Bills Quia Timet—Quieting Title.—“The origin, grounds, growth, and extent of the jurisdiction of equity to entertain bills of peace have been fully discussed in the section which treats of the jurisdiction to prevent a multiplicity of suits.¹ It was shown that there were two distinct kinds of bills of peace,—the one brought for the purpose of establishing a general right between a single party and numerous persons claiming distinct and individual interests, and the other for the purpose of quieting a complainant’s title to land against a single adverse claimant.² In the first class, the original jurisdiction to maintain ‘bills of peace’ or ‘bills *quia timet*,’ properly so called, will only be exercised where the claims of the numerous individuals have some community of interest in the subject-matter, or arise from a common title; but the jurisdiction has been enlarged so as to entertain analogous suits, where the community of interest is in respect merely to the questions involved or to the kind of relief demanded.³ In the second class, the suit can be main-

¹ See 1 Pom. Eq. Jur., Part First, Chapter Second, sec. IV, §§ 243-275.

² 1 Pom. Eq. Jur., §§ 246-248.

³ For the discussion of the growth and development and present *status* of the jurisdiction which has developed from these bills of peace,—“classes third and fourth” of the analysis in the chapter referred to, see Pom. Eq. Jur., §§ 255-261, 264-270, 273, 274, and notes.

tained by a party in possession against a single defendant ineffectually seeking to establish a legal title by re-

It may be convenient, in this place, to summarize the chief results of the great mass of cases decided within the last twenty-five years, and embodied in the present author's notes to the chapter just cited. Professor Pomeroy's conclusion, that the jurisdiction may be exercised when there is a community of interest in respect merely to the questions involved, but none in the subject-matter, has been adopted in an overwhelming majority of the cases; see, for recent cases upholding the jurisdiction, in the "third class," where the plaintiffs are numerous, Pom. Eq. Jur., § 256, note (a); § 257, note (b); § 260, notes (b), (d); § 261, note (b); denying the jurisdiction, § 265, note, (a); § 267, note (a); upholding the jurisdiction in the "fourth class," § 256, note (b); § 261, note (b); denying the jurisdiction, § 264, note (b). This is hardly, therefore, a matter of dispute at the present day; the question on which the recent cases chiefly separate is, will the exercise of the equity jurisdiction, in a given case, be *effectual* to avoid a multiplicity of suits in fact, as well as in form? There must be "some common relation, some common interest, or some common question" among the parties; if, after the numerous parties are joined, there still remain, in the one comprehensive equity proceeding, separate issues to be tried between each of them and the single plaintiff or defendant, nothing will be gained by the court of equity's assuming jurisdiction. See Pom. Eq. Jur. (3d ed.), § 251½, and notes, where this limitation on the exercise of the jurisdiction is fully illustrated and explained by numerous quotations from recent cases. Other limitations are, that equity jurisdiction will not be assumed where the numerous parties may be joined equally as well in an action at law; or (in the author's "second" and "fourth" classes), where there is merely a possibility, and not a probability, of vexatious litigation: See Pom. Eq. Jur. (3d ed.), § 251¾.

It often happens that litigation with numerous parties may be avoided by an injunction directed against a person who is not one of their number: See Pom. Eq. Jur. (3d ed.), § 250, note (e), § 274, note (d).

On the question of the right of a single person to sue, or the right to sue a single person, as representative of a numerous class, see Pom. Eq. Jur. (3d ed.), § 256, note (c), § 251½, end of note (e).

The jurisdiction which has developed from the ancient bills of peace should be carefully distinguished from that for apportionment, where numerous plaintiffs claim to share ratably in a fund of a limited amount; in the latter case, of course, there need be no community of interests among the different plaintiffs, no single question

peated actions of ejectment. It is here necessary that the title of the complainant should be established by at

to be settled by the one suit in equity: See Pom. Eq. Jur. (3d ed.), note to § 261, at p. 415.

The following references to the recent cases affirming, denying, or limiting the jurisdiction, in "Classes Third and Fourth," are arranged according as the principle relating to multiplicity of suits is invoked for jurisdictional purposes, or merely for purposes of joinder of parties; and according to the form of the equitable remedy in each case.

Class Third. I. Where each of the complainants, suing or defending singly, would have had a cause of action or defense at law, but not in equity: Pp. 412, 413, enjoining actions at law against the numerous complainants (*contra*, § 267, note (a); jurisdiction limited, § 251½, note (e)). Pp. 405-410, enjoining taxation and local assessments (*contra*, § 265, note (a), p. 433; jurisdiction limited, § 251½, note (d)). Pp. 413, 414, enjoining enforcement of invalid municipal ordinance. P. 414, enjoining trespass, etc. (for cases where each plaintiff has an equitable cause of action, see pp. 397-400). P. 414, enjoining breach of contract affecting numerous complainants. P. 414, cancellation in favor of numerous complainants. Pp. 414, 415, pecuniary relief to numerous complainants (but in this class of cases the issues as to each plaintiff are usually distinct, and the jurisdiction is declined for that reason; see § 251½, note (c)).

II. Joinder of numerous complainants, each of whom has an equitable cause of action: Pp. 397-400, 415, 416; jurisdiction limited, where distinct issue as to each complainant, p. 376, note.

Class Fourth. I. Where the complainant, suing or defending against each defendant, would have had a cause of action or defense at law, but not in equity: Pp. 416, 417, enjoining numerous actions at law (*contra*, § 264, note (b); jurisdiction limited, where no common question in these actions, § 251½, notes (h), (i); where no danger of vexatious litigation, § 251¾, note (b)). Pp. 417, 418, enjoining tax proceedings which would involve the plaintiff in litigation with numerous persons (*contra*, § 266, note (a)). Pp. 418, 419, enjoining numerous attachments or executions on property claimed adversely by complainant (*contra*, § 264, note (b); jurisdiction limited where garnishment suits may be consolidated at law, § 251¾, note (a)). P. 419, enjoining numerous trespassers (for joinder where there is an equitable cause of action against each, see pp. 423, 424). Pp. 419, 420, cancellation against numerous defendants (jurisdiction limited, because separate issues with each defendant, § 251½, note (g); because no real danger of litigation, § 251¾, note (b)). Pp. 420, 421, quieting title, and settling disputed boundaries against

least one successful trial at law before equity will entertain jurisdiction.”⁴

numerous defendants. Pp. 421, 422, recovery of specific chattels from numerous defendants (jurisdiction limited, where separate issues with each defendant, § 251½, note (j)). Pp. 422, 423, pecuniary relief against numerous defendants (jurisdiction limited, because separate issues with each defendant, § 251½, note (f)).

II. Joinder of numerous defendants against each of whom the complainant has an equitable cause of action: Pp. 423, 424.

4 1 Pom. Eq. Jur., §§ 253, 272. “This class is practically obsolete in many states, owing to the effect given to judgments, by statute, in the action of ejectment”: 4 Pom. Eq. Jur., § 1394, and note 4.

CHAPTER XXXVI.

SUIT TO PREVENT OR REMOVE CLOUD ON TITLE—
STATUTORY SUIT TO QUIET TITLE.

ANALYSIS.

- §§ 724-734. Cloud on title.
- § 724. Definition.
 - § 725. Distinction between bill to quiet title and bill to remove cloud.
 - § 726. Prevention of threatened cloud.
 - § 727. Instrument constituting cloud.
 - § 728. Adequacy of remedy at law.
 - § 729. Does the jurisdiction extend to personal property?
 - § 730. Plaintiff's title.
 - § 731. Possession of plaintiff.
 - § 732. Sufficiency of possession.
 - § 733. Instrument invalid on its face; no relief.
 - § 734. Same; limitations on, and denial of this doctrine.
- §§ 735-743. Statutory suit to quiet title.
- § 735. In general.
 - § 736. Remedy, whether equitable or legal.
 - § 737. Possession of plaintiff.
 - § 738. Title of plaintiff.
 - § 739. Nature of the adverse claim.
 - § 740. Service of process by publication.
 - § 741. Pleading on the part of plaintiff.
 - § 742. Defendant's pleadings.
 - § 743. Judgment or decree.

§ 724. Definition of Cloud on Title.—The authorities refer to the indefiniteness of the term "cloud."¹ In general, a cloud upon one's title is something which constitutes an apparent encumbrance upon it, or an apparent defect in it.² It is something which is appar-

¹ Apperson v. Ford, 23 Ark. 746, 758; Ward v. Dewey, 16 N. Y. 519, 529; Mayor etc. of Brooklyn v. Meserole, 26 Wend. 137.

² Detroit v. Martin, 34 Mich. 170, 173, 22 Am. Rep. 512; Frost v. Leatherman, 55 Mich. 33, 37, 20 N. W. 705. "A cloud upon a title

ently valid but which is in fact invalid.³ Such clouds upon title as may be removed by courts of equity are instruments or other proceedings in writing, which may appear upon the records and thereby cast doubt upon the validity of the record title. A mere verbal claim or oral assertion of ownership in property is not a cloud which equity will remove.⁴

§ 725. **Distinction Between Bill to Quiet Title and Bill to Remove Cloud.**—Suits in chancery to quiet title, in the nature of bills of peace, have been defined in the last chapter. The distinction between these and suits to remove a cloud is not always observed.⁵ The equitable

is but an apparent defect in it. If the title, sole and absolute in fee is really in the person moving against the cloud, the density of the cloud can make no difference in the right to have it removed. Anything of the kind that has a tendency, even in a slight degree to cast a doubt upon the owner's title and to stand in the way of a full and free exercise of his ownership, is, in my judgment, a cloud upon his title, which he may remove": *Whitney v. Port Huron*, 88 Mich. 269, 24 Am. St. Rep. 291, 50 N. W. 316. "A cloud upon one's title is something which shows prima facie some right of a third person to it": *Waterbury Savings Bank v. Lawler*, 46 Conn. 243. "A cloud may be said to be the semblance of a title, either legal or equitable, or a claim of an interest in lands appearing in some legal form, but which is in fact unfounded, or which it would be inequitable to enforce": *Rigdon v. Shirk*, 127 Ill. 412, 19 N. E. 698; *Shults v. Shults*, 159 Ill. 654, 50 Am. St. Rep. 188, 43 N. E. 800. In general, see *Parker v. Shannon*, 121 Ill. 452, 13 N. E. 155.

³ *Bissell v. Kellogg*, 60 Barb. (N. Y.) 629; *Teal v. Collins*, 9 Or. 89.

⁴ *Parker v. Shannon*, 121 Ill. 452, 13 N. E. 155. See, also, *Welles v. Rhodes*, 59 Conn. 498, 22 Atl. 286; *Waters v. Lewis*, 106 Ga. 758, 32 S. E. 854. To the effect that laches cannot be imputed to a plaintiff in possession suing to remove a cloud on title, see *Beck Lumber Co. v. Rupp*, 188 Ill. 562, 80 Am. St. Rep. 190, 59 N. E. 429. See, also, *ante*, volume I, chapter I. To the effect that plaintiff must do equity, see *Emerson v. Shannon*, 23 Colo. 274, 58 Am. St. Rep. 232, 47 Pac. 302.

⁵ See *ante*, § 723. "A bill of peace against an individual reiterating an unsuccessful claim to real property would formerly lie only

relief to remove a cloud from title is "granted on the principle *quia timet*; that is, that the deed or other instrument or proceeding constituting the cloud may be used to injuriously or vexatiously embarrass or affect a plaintiff's title."⁶

where plaintiff was in possession and his right had been successfully maintained. The equity of plaintiff in such cases arose from protracted litigation for the possession of the property which the action of ejectment at common law permitted. That action being founded upon a fictitious demise between fictitious parties, a recovery in one action constituted no bar to another similar action or to any number of such actions. A change in the date of the alleged demise was sufficient to support a new action. Thus the party in possession though successful in every instance might be harassed and vexed if not ruined by a litigation constantly renewed. To put an end to such litigation and give repose to the successful party, courts of equity interfered and closed the controversy. To entitle the complainant to relief in such cases the concurrence of three particulars was essential. He must have been in possession of the property, he must have been disturbed in its possession by repeated actions at law, and he must have established his right by successive judgments in his favor. Upon these facts appearing, the court would interpose and grant a perpetual injunction to quiet the possession of the complainant against any further litigation from the same source. It was only in this way that adequate relief could be afforded against vexatious litigation and the irreparable injury which it entailed": *Holland v. Challen*, 110 U. S. 19, 3 Sup. Ct. 495, 28 L. ed. 52.

§ 4 Pom. Eq. Jur., § 1398; quoted in *Haskell v. Sutton*, 53 W. Va. 206, 44 S. E. 533. See, also, *Shell v. Martin*, 19 Ark. 139, 141; *Hager v. Shindler*, 29 Cal. 55. "A bill *quia timet* or to remove a cloud from the title of real estate differed from a bill of peace in that it did not seek so much to put an end to vexatious litigation respecting the property, as to prevent future litigation by removing existing causes of controversy as to its title. It was brought in view of anticipated wrongs or mischiefs, and the jurisdiction of the court was invoked because the party feared future injury to his rights and interests. To maintain a suit of that character it was generally necessary that the plaintiff should be in possession, and except where the defendants were numerous, that his title should have been established at law or be founded on undisputed evidence or long continued possession": *Holland v. Challen*, 110 U. S. 20, 3 Sup. Ct. 495, 28 L. ed. 52.

§ 726. **Prevention of Threatened Cloud.**—As a court of chancery may undoubtedly entertain a suit to remove an existing cloud upon title, so also it may, in a proper case, interpose its authority to prevent, by injunction, a threatened act from which such a cloud must necessarily arise. In such cases, however, “the danger must be imminent and not merely speculative or potential.”⁷

§ 727. **Instrument Constituting Cloud.**—“It is impossible to lay down rules which will cover all the cases in which a court of equity will interpose its jurisdiction to remove a cloud upon the title to real estate. This jurisdiction does not rest upon any arbitrary rules, but depends upon the facts of each case.”⁸ Instruments and proceedings of every conceivable nature have been removed as clouds on title. A few of the cases are given in the note.⁹

⁷ 4 Pom. Eq. Jur., § 1398, note 1; Union Pac. R. Co. v. Cheyenne, 113 U. S. 516, 5 Sup. Ct. 601, 28 L. ed. 1098; McConaughy v. Penoyer, 43 Fed. 342 (citing Pom. Eq. Jur., §§ 1345, 1398, 1399); Eufaula Bank v. Pruett, 128 Ala. 478, 30 South. 731; Shattuck v. Carson, 2 Cal. 588; Roth v. Insley, 86 Cal. 134, 24 Pac. 853; Young v. Hatch, 30 Colo. 422, 70 Pac. 693; Groves v. Webber, 72 Ill. 606; Bishop v. Moorman, 98 Ind. 1, 49 Am. Rep. 731; Allen v. New Dominion Oil & Gas Co., 24 Ky. Law Rep. 2169, 73 S. W. 747; O'Hare v. Downing, 130 Mass. 16; Gardner v. Terry, 99 Mo. 523, 12 S. W. 888, 7 L. ed. 67; Benecke v. Welsh, 168 Mo. 267, 67 S. W. 604; Pettit v. Shepherd, 5 Paige, 493, 28 Am. Dec. 437; Oakley v. Trustees etc., 6 Paige, 262; Mann v. City of Utica, 44 How. Pr. 334; Sanders v. Village of Yonkers, 63 N. Y. 489; De Witt v. Van Schoyk, 110 N. Y. 7, 6 Am. St. Rep. 342, 17 N. E. 425; Alvord v. Syracuse, 163 N. Y. 158, 57 N. E. 310; Norton v. Beaver, 5 Ohio, 178; Bank of United States v. Schultz, 2 Ohio, 471; Sperry v. City of Albina, 17 Or. 481, 21 Pac. 453; Hughes v. Linn Co., 37 Or. 111, 60 Pac. 843; Merriman v. Polk, 5 Heisk. 717. “The jurisdiction of the court to enjoin a sale of real estate is co-extensive with its jurisdiction to set aside and order to be canceled a deed of such property”: Pixley v. Huggins, 15 Cal. 127.

⁸ Fonda v. Sage, 48 N. Y. 179.

⁹ *Deeds.*—Bunce v. Gallagher, 5 Blatchf. 487, Fed. Cas. No. 2133;

§ 728. **Adequacy of Remedy at Law.**—"Whether or not the jurisdiction will be exercised depends upon the fact that the estate or interest to be protected is equitable

Peirsoll v. Elliott, 6 Pet. 95, 8 L. ed. 332; *Greenfield v. United States Mtg. Co.*, 133 Fed. 784; *Lyon v. Hunt*, 11 Ala. 295, 46 Am. Dec. 216; *Hunt v. Acre*, 28 Ala. 580; *Barclay v. Henderson*, 44 Ala. 269; *Daniel v. Stewart*, 55 Ala. 278; *Lockett v. Hurt*, 57 Ala. 198; *Posey v. Conway*, 10 Ala. 811; *Florence v. Paschall*, 50 Ala. 28; *Plant v. Barclay*, 56 Ala. 561; *Jones v. De Graffenreid*, 60 Ala. 145; *Arnett v. Bailey*, 60 Ala. 435; *Tyson v. Brown*, 64 Ala. 244; *Baines v. Barnes*, 64 Ala. 375; *Smith's Exr. v. Cockrell*, 66 Ala. 64; *Grigg v. Swindall*, 67 Ala. 187; *Shell v. Martin*, 19 Ark. 139; *Walker v. Peay*, 22 Ark. 103; *Miller v. Neiman*, 27 Ark. 233; *Crane v. Randolph*, 30 Ark. 579; *Castle v. Hillman*, 70 Ark. 157, 66 S. W. 648; *Riley v. Pehl*, 23 Cal. 70; *Hager v. Shindler*, 29 Cal. 47; *Thompson v. Lynch*, 29 Cal. 189; *Lick v. Ray*, 43 Cal. 83; *Cohen v. Sharp*, 44 Cal. 29; *Alden v. Trubee*, 44 Conn. 455; *Munson v. Munson*, 28 Conn. 582, 78 Am. Dec. 693; *Stout v. Cook*, 37 Ill. 283; *Reed v. Tyler*, 56 Ill. 288; *Gage v. Billings*, 56 Ill. 268; *Reed v. Reber*, 62 Ill. 240; *Kennedy v. Northrup*, 15 Ill. 149; *Redmond v. Packenham*, 66 Ill. 434; *Brooks v. Kearns*, 86 Ill. 547; *Burton v. Gleason*, 56 Ill. 25; *Glos v. Furman*, 164 Ill. 585, 45 N. E. 1019; *Peek v. Sexton*, 41 Iowa 566; *Gerry v. Stimson*, 60 Me. 186; *Polk v. Rose*, 35 Md. 153, 89 Am. Dec. 773; *Polk v. Reynolds*, 31 Md. 106; *Polk v. Pendleton*, 31 Md. 118; *Briggs v. Johnson*, 71 Me. 235; *Martin v. Graves*, 5 Allen, 601; *Burns v. Lynde*, 6 Allen, 305; *Sullivan v. Finnegan*, 101 Mass. 447; *Russell v. Deshon*, 124 Mass. 342; *Davis v. City of Boston*, 129 Mass. 377; *Holt v. Weld*, 140 Mass. 578, 5 N. E. 506; *Smith v. Smith*, 150 Mass. 73, 22 N. E. 437; *Tobin v. Gillespie*, 152 Mass. 219, 25 N. E. 88; *Barnes v. Barnes*, 161 Mass. 281, 37 N. E. 379; *Loring v. Hildreth*, 170 Mass. 328, 64 Am. St. Rep. 301, 49 N. E. 652; *Merchants' Bank v. Evans*, 51 Mo. 335; *Clark v. Covenant Ins. Co.*, 52 Mo. 272; *Harrington v. Utterback*, 57 Mo. 519; *Keane v. Kyne*, 66 Mo. 216; *Haythorn v. Margerem*, 3 Halst. Ch. (7 N. J. Eq.) 324; *Downing v. Wherrin*, 19 N. H. 91, 49 Am. Dec. 139; *Hall v. Fisher*, 9 Barb. 17; *Buffalo etc. R. R. v. Lampson*, 47 Barb. 533; *Remington Paper Co. v. O'Dougherty*, 81 N. Y. 474; *Cox v. Clift*, 2 N. Y. 118; *Boeckes v. Lansing*, 74 N. Y. 437; *Hotchkiss v. Elting*, 36 Barb. 38; *Levy v. Hart*, 54 Barb. 248; *Busbee v. Macy*, 85 N. C. 329; *Lance v. Tainter (N. C.)*, 49 S. E. 211; *Busbee v. Lewis*, 85 N. C. 332; *Dull's Appeal*, 113 Pa. St. 510, 6 Atl. 540; *Siegel v. Lanier*, 148 Pa. St. 236, 23 Atl. 996; *Kittles v. Williams*, 64 S. C. 229, 41 S. E. 975; *Jones's Heirs v. Perry*, 10 Yerg. 59, 30 Am. Dec. 430; *Johnsen v. Cooper*, 2 Yerg. 524, 24 Am. Dec. 502; *Almony v. Hicks*, 3 Head, 39; *Carter v. Taylor*, 3 Head, 30; *Butler v. Rutledge*,

in its nature, or that the remedies at law are inadequate where the estate or interest is legal,—a party being left to his legal remedy where his estate or interest is legal

2 Cold. 4; Willock v. Grisham, 3 Sneed, 237; Williams v. Williams, 7 Baxt. 116; Corinth v. Locke, 62 Vt. 411, 20 Atl. 809, 11 L. R. A. 207; Huffman v. Huffman, 1 Lea, 491; Jones v. Neale, 2 P. & H. 339; Carroll v. Brown, 28 Gratt. 791; Steinman v. Vicars, 99 Va. 595, 39 S. E. 227; Willis v. Sweet, 49 Wis. 505, 5 N. W. 895.

Mortgages and foreclosure proceedings.—Reynolds v. Kirk, 105 Ala. 446, 17 South. 95; Kelly v. Martin, 107 Ala. 479, 18 South. 132; Stevens v. Reeves, 138 Cal. 678, 72 Pac. 346; Head v. Fordyce, 17 Cal. 149; Ramsdell v. Fuller, 28 Cal. 37, 87 Am. Dec. 103; Hartford v. Chipman, 21 Conn. 488; Sherman v. Fitch, 98 Mass. 59 (chattel); Clouston v. Shearer, 99 Mass. 209; Commissioners v. Smith, 10 Allen, 448, 87 Am. Dec. 672; Vogler v. Montgomery, 54 Mo. 577; Ward v. Dewey, 16 N. Y. 519; Eldridge v. Smith, 34 Vt. 484; Watkins v. Brunt, 53 Ind. 208; Hodgen v. Guttery, 58 Ill. 431; Standish v. Dow, 21 Iowa, 363; New England Mut. L. Ins. Co. v. Capehart, 63 Minn. 120, 65 N. W. 258.

Judgments and executions.—Chapman v. Brewer, 114 U. S. 158, 5 Sup. Ct. 799, 29 L. ed. 83; Burt v. Cassety, 12 Ala. 734; Alabama etc. Co. v. Pettway, 24 Ala. 544; Rea v. Longstreet, 54 Ala. 291; Pixley v. Huggins, 15 Cal. 127; England v. Lewis, 25 Cal. 337; Shattuck v. Carson, 2 Cal. 588; Louisville v. Gray, 1 Litt. 146; Barton v. Drake, 21 Minn. 299; Uhl v. May, 5 Neb. 157; Corey v. Schuster, 44 Neb. 269, 62 N. W. 470; Title Trust Co. v. Aylesworth, 40 Or. 20, 66 Pac. 276 (sheriff's certificate).

Attachment proceedings.—Marr v. Washburn, 167 Mass. 35, 44 N. E. 1062; Edgell v. Clark, 76 Miss. 66, 23 South. 358.

Leases.—Big Six Development Co. v. Mitchell (C. C. A.), 138 Fed. 279; Mayor etc. v. North Shore etc. Co., 9 Hun, 620; Spofford v. Bangor etc. R. R., 66 Me. 51; Haskell v. Sutton, 53 W. Va. 206, 44 S. E. 533 (citing Pom. Eq. Jur., § 1399).

Land contract.—Sea v. Morehouse, 79 Ill. 216; Larmon v. Jordan, 56 Ill. 204; Boyd v. Schlesinger, 59 N. Y. 301; Washburn v. Burnham, 63 N. Y. 132.

Claim of dower.—Wood v. Seeley, 32 N. Y. 105.

Tax assessments.—Minturn v. Smith, 3 Saw. 142, Fed. Cas. No. 9647; Bolton v. Gilleran, 105 Cal. 244, 45 Am. St. Rep. 33, 38 Pac. 881 (special assessment); De Witt v. Hays, 2 Cal. 463; Waterbury Sav. Bank v. Lawler, 46 Conn. 243; Gage v. Rohrbach, 56 Ill. 262; Gage v. Chapman, 56 Ill. 311; Barnett v. Cline, 60 Ill. 205; Holland v. Mayor

in its nature, and full and complete justice can thereby be done."¹⁰

§ 729. Does the Jurisdiction Extend to Personal Property?

It has been held that a cloud upon the title to personal property, even by matter appearing of record, cannot be removed;¹¹ but there seems no good reason for thus restricting the jurisdiction, and the instances are not infrequent where it has been exercised, in cases of void re-

etc., 11 Md. 186, 69 Am. Dec. 195; Scofield v. Lansing, 17 Mich. 437; Henry v. Gregory, 29 Mich. 68; Curtis v. East Saginaw, 35 Mich. 508; Lockwood v. St. Louis, 24 Mo. 20; Fowler v. St. Joseph, 37 Mo. 228; McPike v. Pen, 51 Mo. 63; Johnson v. Hahn, 4 Neb. 139; Morris Canal etc. Co. v. Jersey City, 12 N. J. Eq. 227; Longley v. City of Hudson, 4 T. & C. 353; Newell v. Wheeler, 48 N. Y. 486; Dederer v. Voorhies, 81 N. Y. 153; Wells v. Buffalo, 80 N. Y. 253; Townsend v. Mayor etc., 77 N. Y. 542; Stuart v. Palmer, 74 N. Y. 183, 30 Am. Rep. 289; Sanders v. Yonkers, 63 N. Y. 489; Guest v. Brooklyn, 69 N. Y. 506; Marsh v. Brooklyn, 59 N. Y. 280; Heywood v. Buffalo, 14 N. Y. 534; Tilden v. Mayor etc., 56 Barb. 340; Cong. Shaarai Tephila v. May etc., 53 How. Pr. 213; Hebrew etc. Assn. v. Mayor etc., 4 Hun, 446; Howell v. Buffalo, 2 Abb. App. Dec. 412; Burnet v. Cincinnati, 3 Ohio, 73, 17 Am. Dec. 582; Culbertson v. Cincinnati, 16 Ohio, 574; Shepardson v. Milwaukee County, 28 Wis. 593; Milwaukee Iron Co. v. Hubbard, 29 Wis. 51; Hamilton v. Fond du Lac, 25 Wis. 490; Head v. James, 13 Wis. 641. See, also, cases cited in note, 7, *ante*.

¹⁰ Pom. Eq. Jur., § 1399; as where the plaintiff, having a legal title, is out of possession and the defendant is in possession: See *post*, § 731. In general, see Davidson v. Calkins, 92 Fed. 230; Teague v. Martin, 87 Ala. 500, 13 Am. St. Rep. 63, 6 South. 362; Grigg v. Swindall, 67 Ala. 187; Smith v. Cockrell, 66 Ala. 64; Jones v. De Graffenreid, 60 Ala. 145; Plant v. Barclay, 56 Ala. 561; Daniel v. Stewart, 55 Ala. 278; Crane v. Randolph, 30 Ark. 579; Miller v. Neiman, 27 Ark. 233; Munson v. Munson, 28 Conn. 582, 73 Am. Dec. 693; Budd v. Long, 13 Fla. 288; Gage v. Rohrbach, 56 Ill. 262; Kennedy v. Northrup, 15 Ill. 148; Helden v. Hellen, 80 Md. 620, 31 Atl. 506; Commonwealth v. Smith, 10 Allen (Mass.), 448, 87 Am. Dec. 672; Hall v. Whiston, 5 Allen (Mass.), 126; Rhode v. Hassler, 113 Mich. 56, 71 N. W. 461; Moran v. Palmer, 13 Mich. 367; King v. Carpenter, 37 Mich. 363; Sneathen v. Sneathen, 104 Mo. 201, 24 Am. St. Rep. 328, 16 S. W. 497; Lockwood v. St. Louis, 24 Mo. 20.

¹¹ Loggie v. Chandler, 95 Me. 220, 49 Atl. 1059 (chattel mortgage).

corded chattel mortgages, spurious issues of shares of stock, etc.¹²

§ 730. **Plaintiff's Title.**—A bill to remove a cloud from title cannot be brought by a stranger to the title. Since the plaintiff must recover solely on the strength of his own title and not on the weakness of that of his adversary, it follows that he must have some title.¹³ It is not necessary that the claimant should have a *prima facie* record title, which the real owner must call in extrinsic evidence to overthrow,¹⁴ but it is sufficient *prima facie* if the complainant makes out a title apparently good.¹⁵

¹² *Sherman v. Fitch*, 98 Mass. 59 (chattel mortgage); *Rosenbaum v. Foss*, 4 S. D. 184, 56 N. W. 114; *Magnuson v. Clithero*, 101 Wis. 551, 77 N. W. 882. Spurious stock certificates, issued by officer having apparent authority to do so, undistinguishable upon their face from the certificates of genuine stock and outstanding in the hands of numerous holders as evidence of interests in the property of the corporation, are clouds upon the title of the genuine stockholders, which equity will remove: *New York & New Haven R. R. Co. v. Schuyler*, 17 N. Y. 592. The issue of capital stock contrary to law creates a cloud upon the rights of the stockholders; the right to have such cloud removed may be asserted by stockholders at any time during the existence of the cloud, although the corporation treats the holder of such stock as a bona fide stockholder: *Stebbins v. Perry County*, 167 Ill. 567, 47 N. E. 1048. One who, as attaching creditor, has acquired a lien upon personal property may maintain suit to remove a cloud upon it which would affect its sale in the proceeding: *Voss v. Murray*, 50 Ohio St. 28, 32 N. E. 1112.

¹³ *Kennedy v. Elliott*, 85 Fed. 832; *Hall v. Melvin*, 62 Ark. 439, 54 Am. St. Rep. 301, 35 S. W. 1109; *Levy v. Ladd*, 35 Fla. 391, 17 South. 635; *Whipple v. Gibson*, 158 Ill. 339, 41 N. E. 1017; *Wilkinson v. Hiller*, 71 Miss. 678, 14 South. 442; *Ricks v. Bassett*, 68 Miss. 250, 8 South. 514; *Purdy v. Collyer*, 26 N. Y. App. Div. 338, 49 N. Y. Supp. 665. "The complainant in a bill to remove a cloud is not bound to show a perfect title from the government, or as against all the world, but he must show title in himself superior to the alleged cloud": *South Chicago Brewing Co. v. Taylor*, 205 Ill. 132, 68 N. E. 732; citing *Rucker v. Dooley*, 49 Ill. 377, 99 Am. Dec. 614; *Wing v. Sherrer*, 77 Ill. 200; *Glos v. Randolph*, 138 Ill. 268, 27 N. E. 941.

¹⁴ *Fonda v. Sage*, 48 N. Y. 173.

¹⁵ *Rayner v. Lee*, 20 Mich. 384; *Hall v. Kellogg*, 16 Mich. 135.

As to whether this title must be legal or may be equitable the cases are not uniform. The better opinion appears to be that the proposition that only the owner of the legal title can remove a cloud "is not only not sustainable upon authority but is not supported by the reason which lies at the basis of such actions. That reason is that the party has no adequate remedy at law, and that to require him to await the action of the party claiming under the instrument or other matter constituting the cloud, until perhaps his evidence and ability to defend against it is lost by lapse of time, would, in many cases, be to deny him any remedy. The reason is as forcible in the case of one holding an equitable estate or merely a lien, as in that of the legal owner."¹⁶

¹⁶ *Redin v. Branhan*, 43 Minn. 283, 45 N. W. 445, per Gilfillan, C. J. For cases holding that a legal title is necessary, see *Frost v. Spitley*, 121 U. S. 552, 7 Sup. Ct. 1129, 30 L. ed. 1010; *Dewing v. Woods*, 111 Fed. 575, 49 C. C. A. 443; *Guarantee Trust etc. Co. v. Delta etc. Co.*, 104 Fed. 5, 43 C. C. A. 396; *Crook v. Brown*, 11 Md. 158; *Glenn v. West* (Va.), 49 S. E. 671. That an equitable title is sufficient, see *Armstrong v. Connor*, 86 Ala. 350, 5 South. 451; *Echols v. Hubbard*, 90 Ala. 309, 7 South. 817 (citing *Pom. Eq. Jur.*, § 1399, note); *Sloan v. Sloan*, 25 Fla. 53, 5 South. 603. And see cases cited, *post*, next section, note 20. It has frequently been held that one who has conveyed with covenants of warranty, or under an agreement to clear the title for the benefit of his grantee, has a standing in a court of equity to remove a cloud, especially where he has a grantor's lien for part of the purchase-money: *Remer v. Mackay*, 35 Fed. 86 (one who is only a warrantor in the chain of title may have a cloud removed); *Sutliff v. Smith*, 58 Kan. 559, 50 Pac. 455 (part of purchase-money unpaid; grantor has sufficient interest to give him a standing in a court of equity to have the title cleared); *Begole v. Hershey*, 86 Mich. 130, 48 N. W. 790 (same); *Styer v. Sprague*, 63 Minn. 414, 65 N. W. 659 (same); *Pier v. Fond du Lac*, 53 Wis. 421, 10 N. W. 686 (same); *Ely v. Wilcox*, 26 Wis. 91. "It is possible that one who holds land under grant from the United States who has done everything in his power to entitle him to a patent (which he cannot compel the United States to issue to him), and is deemed the legal owner so far as to render the land taxable to him by the state in which it lies, may be considered as having sufficient title

A party who has been in adverse possession for a period of time, which, under the statute of limitations, vests him with a title against all the world, can bring his suit against a party claiming under a record title, to have the claim determined and adjudged null and void as against him. "The statute of limitations as against a party claiming under a written title would have performed but half its mission, as a statute of repose, if the party relying upon it must wait till he is attacked before he can reduce the evidence of his title to the form of a permanent record."¹⁷

§ 731. Possession of Plaintiff.—"As to whether possession by a plaintiff is necessary before he can resort to equity to remove a cloud, there appears to be some conflict of opinion, arising from loose and careless statements of judges, and an overlooking of the principles of equity in regard to the exercise of its jurisdiction. When the estate or interest to be protected is equitable, the jurisdiction should be exercised whether the plaintiff is in or out of possession, for under these circumstances legal remedies are not possible; but when the estate or interest is legal in its nature, the exercise of the jurisdiction depends upon the adequacy of legal

to sustain a bill in equity to quiet his right and possession": *Frost v. Spitley*, 121 U. S. 506, 7 Sup. Ct. 1129, 30 L. ed. 1012; citing *Carroll v. Safford*, 3 How. 463, 11 L. ed. 681; *Van Brocklin v. Tennessee*, 117 U. S. 169, 6 Sup. Ct. 670, 29 L. ed. 851; *Van Wyck v. Knevals*, 106 U. S. 370, 1 Sup. Ct. 336, 27 L. ed. 204; *Southern Pacific R. R. Co. v. Stanley*, 49 Fed. 263.

¹⁷ *Arrington v. Liscom*, 34 Cal. 365, 94 Am. Dec. 722, per Sawyer, J.; *Clemmons v. Cox*, 116 Ala. 567, 23 South. 79; *Torrent Fire Engine Co. v. Mobile*, 101 Ala. 559, 14 South. 557; *Normant v. Eureka Co.*, 98 Ala. 181, 39 Am. St. Rep. 45, 12 South. 454; *Baker v. Clark*, 128 Cal. 181, 60 Pac. 677; *Tracy v. Newton*, 57 Iowa, 210, 10 N. W. 636; *Vier v. Detroit*, 111 Mich. 646, 70 N. W. 139; *McRee v. Gardner*, 131 Mo. 599, 33 S. W. 166; *Parker v. Metzger*, 12 Or. 407, 7 Pac. 518; *contra*, *McCoy v. Johnson*, 70 Md. 490, 17 Atl. 387.

remedies. Thus, for example, a plaintiff out of possession, holding the legal title, will be left to his remedy by ejectment, under ordinary circumstances.¹⁸ But where he is in possession, and thus unable to obtain any adequate legal relief, he may resort to equity.¹⁹ Where, on the other hand, a party out of possession has an equitable title, or where he holds the legal title under circumstances that the law cannot furnish him full and complete relief, his resort to equity to have a cloud removed ought not to be questioned.²⁰ While it cannot

¹⁸ *Whitehead v. Shattuck*, 138 U. S. 146, 11 Sup. Ct. 276, 34 L. ed. 873; *Plant v. Barclay*, 56 Ala. 561; *Jones v. De Graffenreid*, 60 Ala. 145; *Smith's Exr. v. Cockrell*, 66 Ala. 64; *Gregg v. Swindall*, 67 Ala. 187; *Treadwell v. Torbert*, 133 Ala. 504, 32 South. 126; *Tarwater v. Going (Ala.)*, 37 South. 330; *Lawrence v. Zimpleman*, 37 Ark. 643; *Branch v. Mitchell*, 24 Ark. 439; *Crane v. Randolph*, 30 Ark. 579; *Munson v. Munson*, 28 Conn. 582, 73 Am. Dec. 693; *Clem v. Meserole*, 44 Fla. 191, 32 South. 783; *Simmons v. Carlton*, 44 Fla. 719, 33 South. 408; *Ropes v. Jennerson (Fla.)*, 34 South. 955 (by purchaser at execution to set aside deed by judgment debtor in fraud of judgment creditor; *contra*, see *Hager v. Shindler*, 29 Cal. 47); *Burton v. Gleason*, 56 Ill. 25; *Glos v. Kemp*, 192 Ill. 72, 61 N. E. 473; *Polk v. Pendleton*, 31 Md. 118; *King v. Carpenter*, 37 Mich. 363; *Moran v. Palmer*, 13 Mich. 370; *Essex County Nat. Bank v. Harrison*, 57 N. J. Eq. 91, 40 Atl. 209; *Odle v. Odle*, 73 Mo. 289; *Smith v. Thomas*, 99 Va. 86, 37 S. E. 784. If land is held adversely by another under color of title, complainant must first recover possession by an action at law: *Daniel v. Stewart*, 55 Ala. 278.

¹⁹ *Allen v. Hanks*, 136 U. S. 311, 10 Sup. Ct. 961, 34 L. ed. 418; *Jones v. De Graffenreid*, 60 Ala. 145; *Branch v. Mitchell*, 24 Ark. 439; *Gage v. Rohrback*, 56 Ill. 266; *Gage v. Billings*, 56 Ill. 268; *Hinckley v. Greany*, 118 Mass. 595; *Sullivan v. Finnegan*, 101 Mass. 447; *Clouston v. Shearer*, 99 Mass. 209; *Loomis v. Roberts*, 57 Mich. 284, 23 N. W. 816; *Dull's Appeal*, 113 Pa. St. 510, 6 Atl. 540; and see the cases in this chapter, *passim*, where the relief has been granted.

²⁰ See *Shipman v. Furniss*, 69 Ala. 555, 563, 44 Am. Rep. 528 (relief granted, when other grounds of jurisdiction, as the cancellation of the deed for undue influence); *Armstrong v. Conner*, 86 Ala. 350, 5 South. 451, citing Pom. Eq. Jur., § 1399 and note (to cancel deed of wife's statutory separate estate, which divested her of the legal title); *Echols v. Hubbard*, 90 Ala. 309, 7 South. 817 (citing Pom. Eq. Jur., § 1399, and note); *Stock-Growers' Bank v. Newton*, 13 Colo.

be said that the cases are uniform on the above propositions, still it is believed that the rule stated [in § 728], and the above explanations are founded on principle and are sufficient to reconcile a vast majority of the conflicting, or apparently conflicting, judicial opinions and *dicta* on this question. In some of the cases the rule is so broadly stated as to require a plaintiff, seeking to have a cloud removed, under all circumstances to be in possession;²¹ while, on the other hand, it is as generally

245, 22 Pac. 444; *Mulock v. Wilson*, 19 Colo. 296, 35 Pac. 532; *Brown v. Wilson*, 21 Colo. 309, 52 Am. St. Rep. 228, 40 Pac. 688; *Kennedy v. Northup*, 15 Ill. 148 (deed obtained by fraud); *Redmond v. Packenham*, 66 Ill. 434 (same); *Booth v. Wiley*, 102 Ill. 84, 114 (same); *Haworth v. Taylor*, 108 Ill. 275 (same); *King v. Carpenter*, 37 Mich. 363; *Bausman v. Kelley*, 38 Minn. 197, 8 Am. St. Rep. 661, 36 N. W. 333; *Mason v. Black*, 87 Mo. 329, 345; *Connecticut Mut. L. Ins. Co. v. Smith*, 117 Mo. 261, 297, 38 Am. St. Rep. 656, 670, 22 S. W. 623; *Horn v. Garry*, 49 Wis. 464, 5 N. W. 897. In many of the above cases the relief was granted as incident to a jurisdiction assumed on other grounds, such as fraud in various forms; see, also, *Sayers v. Burkhardt*, 85 Fed. 246, 29 C. C. A. 137, and cases cited. It is frequently granted to remaindermen or reversioners, as they are not able to recover possession: *Woodstock Iron Co. v. Fullenwider*, 87 Ala. 584, 13 Am. St. Rep. 73, 6 South. 197; *Worthington v. Miller*, 134 Ala. 420, 32 South. 748; *Steuart v. Meyer*, 54 Md. 454, 467; *Openheimer v. Levi*, 96 Md. 296, 54 Atl. 74, 60 L. R. A. 729 (reviewing Maryland cases on the subject of plaintiff not in possession); *Sneathen v. Sneathen*, 104 Mo. 201, 24 Am. St. Rep. 328, 16 S. W. 497 (outstanding homestead right); *Keyes v. Ketrick* (R. I.), 56 Atl. 770.

²¹ *Frost v. Spitley*, 121 U. S. 552, 7 Sup. Ct. 1129, 30 L. ed. 1010; *Harland v. B. & M. T. Co.*, 32 Fed. 305; *Smith's Exr. v. Cockrell*, 66 Ala. 64; *Baines v. Baines*, 64 Ala. 375; *Tyson v. Brown*, 64 Ala. 244; *Arnett v. Bailey*, 60 Ala. 435; *Daniel v. Stewart*, 55 Ala. 278; *Miller v. Neiman*, 27 Ark. 233; *Simmons v. Carlton*, 44 Fla. 719, 33 South. 408; *Keane v. Kyne*, 66 Mo. 216; *Clark v. Covenant etc. Ins. Co.*, 52 Mo. 272; *Haythorn v. Margareem*, 7 N. J. Eq. 324; *Busbee v. Lewis*, 85 N. C. 332; *Herrington v. Williams*, 31 Tex. 448; *Glenn v. West* (Va.), 49 S. E. 671.

For the attitude of the federal courts to this question, see 1 Pom. Eq. Jur. (3d ed.), § 293, note (a). See, also, *Willitt v. Baker*, 133 Fed. 937.

stated that possession is never essential.²² Both of these extreme views are open to criticism, and the cases should always be considered with reference to the facts actually before the court."²³ Where, however, neither party is in possession or where the lands are wild and unoccupied, it has been generally admitted that the remedy at law is inadequate and that equity has jurisdiction to remove or prevent a cloud.²⁴

§ 732. Sufficiency of Possession.—Actual possession with a claim of ownership in fee establishes a presumptive title and is sufficient to maintain a bill to remove a cloud upon title.²⁵ The possession must be *bona fide* and fairly gained.²⁶ It must have been acquired in a lawful way. If it has been obtained by violence or by the use of any unfair or corrupt means or by fraud, equity will not lend its aid.²⁷ Aside from the general rule as above stated, what is a sufficient possession to sustain the jurisdiction of equity depends on the particular facts of each case.²⁸

²² Hager v. Shindler, 29 Cal. 47; Thompson v. Lynch, 29 Cal. 189; Almony v. Hicks, 3 Head, 39; Bunce v. Gallagher, 5 Blatchf. 481, Fed. Cas. No. 2133; Jones v. Smith, 22 Mich. 360; Post v. Campbell, 110 Wis. 378, 85 N. W. 1032.

²³ 4 Pom. Eq. Jur., § 1399, note 1.

²⁴ For the numerous cases in the United States courts, applying the statutory "suit to quiet title" or to determine adverse claims, to this state of circumstances, see 1 Pom. Eq. Jur. (3d ed.), p. 504, note. In general, see Simmons v. Carlton, 44 Fla. 719, 33 South. 408; Clem v. Meserole, 44 Fla. 191, 32 South. 783; Glos v. Kemp, 192 Ill. 72, 61 N. E. 473; Glos v. Beckman, 183 Ill. 158, 55 N. E. 636; Glos v. Goodrich, 175 Ill. 20, 51 N. E. 643; Glos v. Archer, 214 Ill. 74, 73 N. E. 382; Lejenne v. Harmon, 29 Neb. 268, 45 N. W. 630; Low v. Staples, 2 Nev. 209; McLeod v. Lloyd, 43 Or. 260, 71 Pac. 795, 74 Pac. 491; Pier v. Fond du Lac, 38 Wis. 470; Davenport v. Stephens, 95 Wis. 456, 70 N. W. 661.

²⁵ See cases cited under preceding paragraph.

²⁶ Watson v. Lion Brewing Co., 61 Mich. 595, 28 N. W. 726.

²⁷ Gage v. Hampton, 127 Ill. 87, 20 N. E. 12, 2 L. R. A. 512.

²⁸ Actual possession of a part of a tract coupled with constructive

§ 733. Instrument Invalid on Its Face; No Relief.—

“While a court of equity will set aside a deed, agreement, or proceeding affecting real estate, where extrinsic evidence is necessary to show its invalidity, because such instrument or proceeding may be used for annoying and injurious purposes at a time when the evidence to contest or resist it may not be as effectual as if used at once,²⁹ still, if the defect appears upon its face, and a resort to extrinsic evidence [on the part of the complainant] is unnecessary, the reason for equitable interference does not exist, for it cannot be said that any cloud whatever is cast upon the title.”³⁰ As a part of the

possession of the balance is sufficient possession to maintain suit to remove a cloud from the whole tract: *Fitzhugh v. Barnard*, 12 Mich. 104; *Sullivan v. Finnegan*, 101 Mass. 447; actual possession by a tenant or agent is sufficient possession by the landlord or principal: *Sloan v. Sloan*, 25 Fla. 53, 5 South. 603.

²⁹ See cases cited, 4 Pom. Eq. Jur., § 1399, note 2; and cases *passim* in this chapter.

³⁰ *Simpson v. Lord Howden*, 3 Mylne & C. 97, 102, 103, 108, and cases cited; *Piersol v. Elliott*, 6 Pet. 95, 8 L. ed. 332; *Phelps v. Harris*, 101 U. S. 375, 25 L. ed. 857; *Minturn v. Smith*, 3 Saw. 142, Fed. Cas. No. 9647; *Posey v. Conaway*, 10 Ala. 811; *Curry v. Peebles*, 83 Ala. 225, 83 South. 622; *Parker v. Boutwell*, 119 Ala. 297, 24 South. 860; *Cohen v. Sharp*, 44 Cal. 29; *Russ v. Crichton*, 117 Cal. 695, 49 Pac. 1043; *Miles v. Strong*, 62 Conn. 95, 25 Atl. 459; *Mayse v. Gaddis*, 2 App. D. C. 20; *Reyes v. Middleton*, 36 Fla. 99, 51 Am. St. Rep. 17, 17 South. 937, 29 L. R. A. 66; *Benner v. Kendall*, 21 Fla. 584; *Briggs v. Johnson*, 71 Me. 235; *Curtis v. City of East Saginaw*, 35 Mich. 508; *Mogan v. Carter*, 48 Minn. 501, 51 N. W. 614; *Gilman v. Van Brunt*, 29 Minn. 271, 13 N. W. 125; *Hannibal v. Nortoni*, 154 Mo. 142, 55 S. W. 220; *Merchants' Bank v. Evans*, 51 Mo. 335, 345; *Pooley v. Buffalo*, 124 N. Y. 206, 24 N. E. 624; *Moore v. Townshend*, 102 N. Y. 387, 7 N. E. 401; *Clark v. Davenport*, 95 N. Y. 477; *Cox v. Clift*, 2 N. Y. 118; *Van Doren v. Mayor etc.*, 9 Paige, 388; *Heywood v. City of Buffalo*, 14 N. Y. 534; *Overing v. Foote*, 43 N. Y. 290; *Marsh v. City of Brooklyn*, 59 N. Y. 280; *Levy v. Hart*, 54 Barb. 248; *Tilden v. Mayor etc.*, 56 Barb. 340; *Mulligan v. Baring*, 3 Daly, 75; *Howell v. City of Buffalo*, 2 Abb. App. 412; *Farnham v. Campbell*, 34 N. Y. 480; *Dederer v. Voorhies*, 81 N. Y. 153; *Stuart v. Palmer*, 74 N. Y. 183, 30 Am. Rep. 289; *Townsend v. Mayor etc.*,

same doctrine, the further rule is generally established, that "where the instrument or proceeding is not thus void upon its face, but the party claiming under it, in order to enforce it, *must necessarily* offer evidence which will *inevitably* show its invalidity and destroy its efficacy,—in each of these cases the court will not exercise its jurisdiction either to restrain or remove a cloud, for the assumed reason that there is no cloud."³¹

§ 734. **Same; Limitations on and Denial of this Doctrine.**—The second rule, as stated in the last section, is subject

77 N. Y. 542; Wells v. City of Buffalo, 80 N. Y. 253; Busbee v. Macy, 85 N. C. 329; Browning v. Lavender, 104 N. C. 73, 10 S. E. 77; Kirk v. Duren, 45 S. C. 597, 23 S. E. 954; Brown v. Cohn, 88 Wis. 627, 60 N. W. 826; Cornish v. Frees, 74 Wis. 490, 43 N. W. 507; Head v. James, 13 Wis. 641; Shepardson v. Supervisors, 28 Wis. 593. "If, however, the claim is based upon a written instrument which is void upon its face, or which does not in its terms apply to the property it is claimed to affect, there seems to be no reason for entertaining a litigation respecting it, before it is attempted to be enforced; for the party apprehending danger has his defense always at hand. In such a case this court has determined that no action at the suit of the party apprehending injury will lie. The same reason applies to cases where the claim requires the existence of a series of facts or the performance of a succession of legal acts and there is a defect as to one or more links. The party must in general wait until the pretended title is asserted. This principle is also well settled by authority. In both these classes of cases the party whose estate is questioned may naturally wish to have the matter speedily determined, as he may in the meantime suffer inconveniences and even actual damage on account of the discredit attaching to his title by reason of the unfounded claim. But unless the circumstances are such as to sustain an action for slander of title, the law regards the injury too speculative to warrant its interference": Scott v. Onderdonk, 14 N. Y. 9, 67 Am. Dec. 106.

31 Pom. Eq. Jur., § 1399; Scott v. Onderdonk, 14 N. Y. 147, 67 Am. Dec. 106; Marsh v. Brooklyn, 59 N. Y. 280; Washburn v. Burnham, 63 N. Y. 132 (extreme application of principle; in suit by defendant he must, by extrinsic proof, show power of attorney to execute the instrument, and relief therefore denied to complainant); Bucknell v. Story, 36 Cal. 67 (injunction against tax sale refused where invalidity would appear in proceedings to enforce the sale). For further cases, see notes 34 and 35 to next section.

to a number of limitations, some of which have given rise to a sharp conflict of authority. "In many states, deeds, certificates, and other instruments given on sales for taxes are made *prima facie* evidence by statute of the regularity of proceedings connected with the assessments and sales, and it is well settled that courts of equity will set aside such instruments for defects, although such defects are apparent" on the face of the proceedings leading up to the execution of the instrument; or, in a proper case, the execution of such an instrument, *prima facie* valid on its face, will be enjoined.³² It is also a rule in many jurisdictions that where the title of both complainant and defendant are derived from a common source, but defendant's title appears by the records to have originated subsequently to the complainant's title, so that by an inspection of the whole record it appears that the defendant's title is *prima facie* inferior to that of the complainant, the complainant is still entitled to equitable relief, since he would be required, in an action by the defendant, to offer evidence of his own prior title in order to defeat a recovery.³³ In New York, however, and a few other jur-

³² Pom. Eq. Jur., § 1399, note 3; Rich v. Braxton, 158 U. S. 407, 15 Sup. Ct. 1006, 39 L. ed. 1033; Huntington v. Central Pacific R. R., 2 Saw. 503, Fed. Cas. No. 6911; Chase v. City of Los Angeles, 122 Cal. 540, 55 Pac. 414, and cases cited; Palmer v. Rich, 12 Mich. 414; Marquette etc. R. R. v. Marquette, 35 Mich. 504; Weller v. St. Paul, 5 Minn. 95; Stewart v. Crysler, 100 N. Y. 378, 3 N. E. 471; Allen v. Buffalo, 39 N. Y. 386; Crooke v. Andrews, 40 N. Y. 547; Hatch v. Buffalo, 38 N. Y. 276; Scott v. Onderdonk, 14 N. Y. 9, 67 Am. Dec. 106; Alvord v. City of Syracuse, 163 N. Y. 158, 57 N. E. 310.

³³ "Every deed from the same source through which the plaintiff derives his real property must, if valid on its face, necessarily have the effect of casting such cloud upon the title. . . . The true test, as we conceive, by which the question, whether a deed would cast a cloud upon the title of the plaintiff, may be determined, is this: Would the owner of the property, in an action of ejectment brought by the adverse party, founded upon the deed, be required to offer

isdictions, the contrary is the rule; if it appears by the whole record that the complainant's title is paramount, there is no cloud to be removed.³⁴

In pursuance of the general doctrine it is usually held that if the defendant's title is derived from a complete stranger to the complainant's title, from one who never had any connection with the property, it does not constitute a cloud; as, where an execution is levied upon lands owned by complainant, issued upon a judgment, in an action to which he was not a party, against one who never had any interest in the lands.³⁵ But in several states such levy may be enjoined, on the general theory obtaining in such states that a void act under color of judicial process is subject to injunction.³⁶

evidence to defeat a recovery? If such proof would be necessary, the cloud would exist; if the proof would be unnecessary, no shade would be cast by the presence of the deed": *Pixley v. Huggins*, 15 Cal. 127, by Field, C. J. (a leading case on the whole subject); *Key City Gas Light Co. v. Munsell*, 19 Iowa, 305; *Gerry v. Stimson*, 60 Me. 186; *Linnell v. Battey*, 17 R. I. 241, 21 Atl. 606.

³⁴ *Bockes v. Lansing*, 74 N. Y. 437 (complainant's title was derived from an assignee for benefit of creditors of G. W., and defendants, through a sale by receiver of G. W.'s property, subsequently appointed. "Those claiming under the receiver's sale could not establish any title, without first overthrowing the plaintiff's title by showing by extrinsic evidence that the assignment made by G. W. was fraudulent and void"); *Maisch v. Hoffman*, 42 N. J. Eq. 116, 7 Atl. 349.

³⁵ *Lytle v. Sandefeer*, 93 Ala. 396, 9 South. 260 (deed by widow of intestate not a cloud on title of his heirs); *Thompson v. Etowah Iron Co.*, 91 Ga. 538, 17 S. E. 663, per Lumpkin, J., and cases cited (an instructive opinion); *Ward v. Dewey*, 16 N. Y. 519.

³⁶ *Bishop v. Moorman*, 98 Ind. 1, 49 Am. Rep. 731. "No reason in law or in morals can be found that will justly support the position of one who resists an injunction where he concedes he is acting under color of authority, but in fact has none, and is using that authority to seize and sell without right or the semblance of justification the land of another. No one, we suppose, doubts that a property owner may quiet his title against an apparent claim, though it be never so empty, and if he may do this, surely he may by in-

Finally, the doctrine itself has been condemned as wholly impractical and unreasonable, and in a few states, has been rejected. "While this doctrine may be settled by the weight of authority, I must express the opinion that it often operates to produce a denial of justice. It leads to the strange scene, almost daily in the courts, of defendants urging that the instruments under which they claim *are void, and therefore that they ought to be permitted to stand unmolested*, and of judges deciding that the court cannot interfere, *because the deed or other instrument is void*, while from a business point of view every intelligent person knows that the instrument is a serious injury to the plaintiff's title, greatly depreciating its market value, and the judge himself who repeats the rule would neither buy the property while thus affected nor loan a dollar upon its security. This doctrine is, in truth, based upon mere verbal logic, rather than upon considerations of justice and expediency."³⁷

junction prevent that apparent claim from clouding his title, without delaying until it has assumed that shape": *Bishop v. Moorman*, 98 Ind. 3, 49 Am. Rep. 731.

37 Pom. Eq. Jur., § 1399. This criticism has been adopted, and the doctrine repudiated in Texas: *Day Land & Cattle Co. v. State*, 68 Tex. 527, 4 S. W. 865; *Morton v. Morris*, 27 Tex. Civ. App. 262, 66 S. W. 94; and in Washington: *Kinsman v. Spokane*, 20 Wash. 118, 72 Am. St. Rep. 74, 54 Pac. 934. This passage has also been quoted in certain cases enjoining invalid execution sales, enumerated above, notes 33 and 36; *Linnell v. Battey*, 17 R. I. 241, 20 Atl. 606; *Bishop v. Moorman*, 98 Ind. 1, 49 Am. Rep. 731. To the same effect are the early English case, *Bromley v. Holland*, 7 Ves. 3, 21, 22; *dicta* of Chancellor Kent in *Hamilton v. Cummings*, 1 Johns. Ch. 517, and of Chief Justice Marshall in *Peirsoll v. Elliott*, 6 Pet. 98, 8 L. ed. 334, to the effect that the question should be one of discretion, not of jurisdiction, where the instrument was void on its face; and cases in Tennessee: *Jones v. Perry*, 10 Yerg. 58, 83, 30 Am. Dec. 430; *Almony v. Hicks*, 3 Head, 41. In Missouri the courts have attempted a compromise, and have laid down a rule, peculiar to that state, that if the defect in the deed "is such as to require *legal acumen* to discover it, whether

§ 735. **Statutory Suit to Quiet Title—In General.**—The equity jurisdiction to quiet title, independent of statute, was intended to protect the legal owner of the title from being harassed by suits in regard to that title. It was invoked only “by a plaintiff in possession, holding the legal title, when successive actions at law, all of which had failed, were brought against him by a single person out of possession, or when many persons asserted equitable titles against a plaintiff in possession holding the legal or an equitable title. The action has been greatly extended by statute, and in many states is the ordinary mode of trying disputed titles.”³⁸ Very fre-

it appears on the face of the deed or proceedings, or is to be proven *aliunde*, courts of equity entertain jurisdiction to remove the cloud”: *Merchants’ Bank v. Evans*, 51 Mo. 335; *Verdin v. City of St. Louis*, 131 Mo. 26, 33 S. W. 480, 36 S. W. 52; *Hannibal & St. J. R. R. Co. v. Nortoni*, 154 Mo. 142, 55 S. W. 220 (relief refused, since recorder showed that grantor in deed alleged to be a cloud had no title); *Perkins v. Baer*, 95 Mo. App. 70, 68 S. W. 939.

The statutory action to quiet title or determine an adverse claim may, it is often held, be maintained though the adverse claim is invalid upon its face: *Kittle v. Bellegarde*, 86 Cal. 556, 25 Pac. 55 (though the decree includes cancellation of the instruments invalid on their face; citing *Pom. Eq. Jur.*, § 1399); *Palmer v. Yorks*, 77 Minn. 20, 79 N. W. 587; *Rumbo v. Gay Mfg. Co.*, 129 N. C. 9, 39 S. E. 581; *Moore v. Clackemas County*, 40 Or. 538, 67 Pac. 662; *Kinsman v. Spokane*, 20 Wash. 118, 72 Am. St. Rep. 24, 50 Pac. 934; *Fox v. Williams*, 92 Wis. 320, 66 N. W. 357 (decree includes canceling of instrument invalid on its face); *Broderick v. Cary*, 98 Wis. 419, 74 N. W. 95.

38 *Pom. Eq. Jur.*, § 1396. Perhaps it may be said, however, that the statutory remedy has more in common with the suit to remove a cloud from title, and was probably designed to avoid the artificial and unpractical restrictions by which that suit was, and is, encumbered. “The general principles of equity jurisprudence, as administered in this country and in England permit a bill to quiet title to be filed only by a party in possession against a defendant who has been ineffectually seeking to establish his title by repeated actions of ejectment, and as a prerequisite to such bill it was necessary that the title of the plaintiff should have been established by at least one successful trial at law. At common law a party might

quently, proceedings under such statutes are not designated as proceedings to quiet title but are known as proceedings for the determination of adverse claims.³⁹

by successive fictitious demises bring as many actions of ejectment as he chose, and a bill to quiet title was only permitted for the purpose of preventing the party in possession being annoyed by repeated and vexatious actions. The jurisdiction was, in fact, only another exercise of the familiar power of a court of equity to prevent a multiplicity of suits by bills of peace. . . . This method of adjusting titles by bill in equity proved so convenient that in many of the states statutes have been passed extending the jurisdiction of a court of equity to all cases where a party in possession, and sometimes out of possession, seeks to clear up his title and remove any cloud caused by an outstanding deed or lien which he claims to be invalid, and the existence of which is a threat against his peaceable occupation of the land, and an obstacle to its sale. The inability of a court of law to afford relief was a strong argument in favor of extending the jurisdiction of a court of equity to this class of cases': *Wehrman v. Conklin*, 155 U. S. 314, 15 Sup. Ct. 129, 39 L. ed. 167.

³⁹ See the following statutes: Alabama, Acts 1892-93, p. 42; Alaska, Code, § 475 (31 Stats. 410, § 786); Civ. Code, § 809; Rev. Stats. 1887, par. 3132; Arizona, Code Civ. Proc., § 256; Arkansas, Sand. & H. Dig., § 6120; California, Code Civ. Proc., § 738; Colorado, Code Civ. Proc., § 237; Idaho, Code Civ. Proc., § 3379; Rev. Stats. 1887, § 4538; Illinois, Rev. Stats., c. 22, § 50; Indiana, Burns' Rev. Stats., § 1082; Iowa Code, § 3273; Kansas, Gen. Stats. 1901, § 5081; Civ. Code, § 594; Kentucky, 1 St. Law, 294; Louisiana, Rev. Code Pr., p. 46, arts. 46, 49, 50, 52; Michigan, Comp. Laws, § 448; Minnesota, Gen. Stats. 1894, c. 75, § 2; Mississippi, Rev. Code, § 1833; Montana, Code Civ. Proc., § 1310; Nebraska, Comp. Stats., c. 73, § 57; Nevada, Civ. Pr. Act, § 25; Gen. Stats., § 3278; New Jersey, Gen. Stats., p. 3486; New York, Code Civ. Proc., § 1638; North Carolina, Laws 1893, c. 6; North Dakota, Rev. Code, § 5904; Ohio, Code Civ. Proc., § 557; Oregon, B. & C. Comp., § 506; South Dakota, Code Civ. Proc., § 676; Utah, Code Civ. Proc., § 620; Washington, 2 Ball. Ann. Codes & Sts., § 5521; Wisconsin, Rev. Stats., c. 141, § 29. The statutes of Maine, Massachusetts, Missouri and Pennsylvania contain provisions concerning preliminary actions which may be brought against holders of adverse claims to show cause why they should not institute actions to try their titles. The proceedings under these statutes are not of such a distinctively equitable nature as to call for description in this work.

The statutory action to determine an adverse claim is an improvement upon the old bill of peace.⁴⁰ The statute enlarges the class of cases in which equitable relief could formerly be sought in the quieting of title. It is not necessary, as formerly, that the plaintiff should first establish his right by an action at law. He can immediately, upon knowledge of such claim, require the nature and character of the adverse estate or interest to be produced, exposed and judicially determined, and the question of title be thus forever quieted.⁴¹

40 "The statute of Nebraska enlarges the class of cases in which relief was formerly afforded by a court of equity in quieting the title to real property. It authorizes the institution of legal proceedings not merely in cases where a bill of peace would lie, that is to establish the title of the plaintiff against numerous parties insisting upon the same right or to obtain repose against the repeated litigation of an unsuccessful claim by the same party; but also to prevent future litigation respecting the property by removing existing causes of controversy as to its title, and so embraces cases where a bill *quia timet* to remove a cloud upon the title would lie": *Holland v. Challen*, 110 U. S. 15, 3 Sup. Ct. 495, 28 L. ed. 52.

41 *Stark v. Starrs*, 6 Wall. 409, 18 L. ed. 926; *Curtis v. Sutter*, 15 Cal. 263; *Castro v. Barry*, 79 Cal. 446, 21 Pac. 946; *American Dock etc. Co. v. School Trustees*, 37 N. J. Eq. 266; *Bogert v. City of Elizabeth*, 27 N. J. Eq. 568; *King v. Carpenter*, 37 Mich. 363. "The statute is remedial and highly beneficial. It should, therefore, be construed liberally. It is a statute of repose. It deprives the defendant of no right. His claim may be tried at law, if he desires it. It compels him to a speedy trial of the question": *Holmes v. Chester*, 26 N. J. Eq. 81; *Bogert v. City of Elizabeth*, 27 N. J. Eq. 568. "The purpose of the act was to relieve, not persons who had the power to test the hostile claim by a direct proceeding in the usual mode, but to aid those persons whose situation afforded them no such opportunity. The inequity that was designed to be remedied grew out of the situation of a person in the possession of land as owner, in which land another person claimed an interest which he would not enforce; and the hardship was that the person so in possession could not force his adversary to sue, and thus put the claim to test. The title to the act indicates that this was the purpose, for it is 'an act to compel the determination of claims to real estate'": *Jersey City v. Lembeck*, 31 N. J. Eq. 255. See, also, *Albro v. Dayton*, 50 N. J. Eq. 574, 25 Atl. 937; *Adler v. Sullivan*, 115

§ 736. **Remedy, Whether Equitable or Legal.**—It has been held, in every state but one, and in the United States courts, that the remedy created by these statutes is an equitable remedy, in the instances where the defendant is not in possession of the land; and that neither party is of right entitled to a jury trial.⁴² Where, how-

Ala. 582, 22 South. 87. Justice Field, in *Holland v. Challen*, 110 U. S., at page 21, 3 Sup. Ct. 495, 28 L. ed. 52, construing the Nebraska statute, said: "It is certainly for the interest of the state that this jurisdiction of the court should be maintained, and that causes of apprehended litigation respecting real property, necessarily affecting its use and enjoyment, should be removed; for so long as they remain they will prevent improvement and consequent benefit to the public. It is a matter of every-day observation that many lots of land in our cities remain unimproved because of conflicting claims to them. The rightful owner of a parcel in this condition hesitates to place valuable improvements upon it, and others are unwilling to purchase it, much less to erect buildings upon it, with the certainty of litigation and loss of the whole. And what is true of lots in cities, the ownership of which is in dispute, is equally true of large tracts of land in the country. The property in this case to quiet the title to which the present suit is brought, is described in the bill as wild and uncultivated land. Few persons would be willing to take possession of such land, inclose, cultivate and improve it, in the face of a disputed claim to its ownership. The cost of such improvements would probably exceed the value of the property. An action for ejectment for it would not lie, as it has no occupant; and if, as contended by the defendant, no relief can be had in equity because the party claiming ownership is not in possession, the land must continue in its unimproved condition. It is manifestly for the interest of the community that conflicting claims to property thus situated should be settled so that it may be subjected to use and improvement. To meet cases of this character statutes like the one in Nebraska have been passed by several states, and they accomplish a most useful purpose."

⁴² For numerous cases where these statutes have been applied on the equity side of the United States courts, see 1 Pom. Eq. Jur. (3d ed.), § 293, note (a), pp. 502-505; *United States Min. Co. v. Lawson*, 134 Fed. 769. When the complainant is in possession, the fact that the answer contains a counterclaim in ejectment does not entitle the defendant to a jury trial: *Angus v. Craven*, 132 Cal. 691, 696, 64 Pac. 1091; *Johnson v. Peterson*, 90 Minn. 506, 97 N. W. 384. But see *Donahue v. Meister*, 88 Cal. 121, 22 Am. St. Rep. 283, 25 Pac.

ever, the defendant is in possession, it is held, in most jurisdictions, that he is entitled to a jury trial, at least when the complainant seeks restitution of possession as part of his relief.⁴³

§ 737. Possession of Plaintiff.—"The states adopting such statutes may be separated into two classes, the

1096, where the defendant was ousted of possession by the complainant immediately before the commencement of the action. Since the action is an equitable one, relief is subject to the maxim, he who seeks equity must do equity: *Benson v. Shotwell*, 87 Cal. 49, 60, 25 Pac. 249.

In Indiana, however, under Rev. Stats., § 409, the action is triable by jury, since it is a statutory action, and not one that "prior to the 18th of June, 1852, was of exclusive equitable jurisdiction": *Puterbaugh v. Puterbaugh*, 131 Ind. 288, 30 N. E. 519, 15 L. R. A. 431; *Jennings v. Moon*, 135 Ind. 168, 34 N. E. 996; *Johnson v. Taylor*, 106 Ind. 89, 5 N. E. 732.

⁴³ In such case, therefore, the equity courts of the United States will not take jurisdiction: See 1 Pom. Eq. Jur., 3d ed., § 293, note (a), pp. 503, 504.

In general, see *Donahue v. Meister*, 88 Cal. 121, 22 Am. St. Rep. 283, 25 Pac. 1096 (where defendant was ousted by plaintiff shortly before commencement of the action); *Newman v. Duane*, 89 Cal. 597, 27 Pac. 66; *Gillespie v. Gouly*, 120 Cal. 515, 52 Pac. 816; *Crocker v. Carpenter*, 98 Cal. 418, 33 Pac. 271 (but where defendants counterclaim for specific performance, no right to jury trial); *Angus v. Crewen*, 132 Cal. 691, 696, 64 Pac. 1091 (but if defendant is out of possession, he cannot, by a counterclaim in ejectment, oust the jurisdiction of the court to try the action as an equitable one); *Hughes v. Hannah*, 35 Fla. 365, 22 South. 613; *Trustees v. Gleason*, 39 Fla. 771, 23 South. 539; *Tabor v. Cook*, 15 Mich. 322; *Chandler v. Graham*, 123 Mich. 327, 82 N. W. 814; *Snowden v. Tyler*, 21 Neb. 215, 31 N. W. 661; *Lyon v. Gombert*, 63 Neb. 630, 88 N. W. 774 (but right to jury trial may be waived).

In other states, the action is held to be equitable, and the defendant in possession not entitled to a jury trial: *Lewis v. Soule*, 52 Iowa, 11, 2 N. W. 400; *Lees v. Wetmore*, 58 Iowa, 170, 12 N. W. 238; *Wofford v. Bailey*, 57 Miss. 239 (but in this state the jurisdiction of equity is exhausted when the hostile claim is canceled; complainant must resort to law to recover possession). The question was left undecided in *Love v. Bryson*, 57 Ark. 589, 22 S. W. 341.

first and most numerous class requiring the plaintiff to be in possession,⁴⁴ and the second allowing the action to be brought by a plaintiff either in or out of possession.”⁴⁵ Under both classes of statutes the right of an owner in possession of lands to maintain a bill to quiet title is undoubted, for he has no adequate remedy at law.⁴⁶

“In regard to the nature of the possession requisite to maintain the action, there is some conflict. It has been held on the one side that possession must be lawful,—must be accompanied by a claim of right, legal or equitable.” Such cases hold that equity will not assume jurisdiction where the possession was acquired by trespass or by unfair means merely for the purpose of filing the bill.⁴⁷ On the other hand, it is held that it is

44 These states and territories are, Alaska, Arkansas, Colorado, Kansas, Kentucky, Illinois, Louisiana, Michigan, Minnesota, Nevada, New Jersey, New York, Ohio, Oregon, Utah, Washington and Wisconsin.

45 Pom. Eq. Jur., § 1396. These states and territories are, Arizona, California, Idaho, Indiana, Iowa, Montana, Mississippi, Nebraska, North Dakota, and South Dakota.

46 *Wehrman v. Conklin*, 155 U. S. 324, 15 Sup. Ct. 129, 39 L. ed. 173; *Curtis v. Sutter*, 15 Cal. 259; *Standish v. Dow*, 21 Iowa, 363; *Miller v. Davidson*, 31 Iowa, 435; *Giltinan v. Lemert*, 13 Kan. 476.

47 *Adler v. Sullivan*, 115 Ala. 582, 22 South. 87; *Cartwright v. McFadden*, 24 Kan. 662; *Deuchatill v. Robinson*, 24 La. Ann. 176; *Rubert v. Brayton*, 82 Mich. 632, 46 N. W. 935; *Oberon Land Co. v. Dunn*, 56 N. J. Eq. 749, 40 Atl. 121; *Tichenor v. Knapp*, 6 Or. 205; Pom. Eq. Jur., § 1396, note. The statute authorizing a person in possession to file a bill to quiet title was not intended to reach a case where a party by sharp practice acquires possession twenty-four hours before filing his bill, and where previous thereto he had a remedy by ejectment: *Stetson v. Cook*, 39 Mich. 750. Where the possession is acquired by buying off the tenant of another and entering into possession, the court will not take jurisdiction: *Hardin v. Jones*, 86 Ill. 313; nor where the entry is obtained by fraud: *Wakefield v. Sunday Lake Min. Co.*, 85 Mich. 605, 39 N. W. 135. The following cases hold that a trespasser cannot maintain the action: *Gould v. Sternburg*, 105 Ill. 488 (*dictum*); *Hardin v. Jones*, 86 Ill. 313; *Wood*

immaterial how possession was acquired,—by fraud, collusion or otherwise, so long as it exists.⁴⁸ In those states in which possession is required, the possession must be actual as distinguished from a constructive possession presumptively arising from the legal title. In other words, it must be a possession in fact as distinguished from a mere legal or civil possession.⁴⁹ Some of the statutes expressly provide that the possession of the tenant shall be equivalent to actual possession by the landlord. In the states where there is no such express provision, the courts nevertheless have held that actual possession by the tenant is sufficient to support the landlord's suit.⁵⁰

§ 738. **Title of Plaintiff.**—As a general rule, the suit may be brought by anyone claiming some right or interest in the land.⁵¹ In most of the states the owner of

v. Missouri etc. R. R. Co., 11 Kan. 323; Rubert v. Brayton, 82 Mich. 632, 46 N. W. 935; Dyer v. Baumeister, 87 Mo. 134.

⁴⁸ Calderwood v. Brooks, 45 Cal. 519; Reed v. Calderwood, 32 Cal. 109; Phillippi v. Leet, 19 Colo. 246, 35 Pac. 540; Scorpion Silver Min. Co. v. Marsano, 10 Nev. 370; Pom. Eq. Jur., § 1396, note.

⁴⁹ Searles v. Costillo, 12 La. Ann. 203; Douglass v. Nuzum, 16 Kan. 515; Conklin v. Hinds, 16 Minn. (Gil. 411) 457; Shepherd v. Nixon, 43 N. J. Eq. 627, 13 Atl. 617. In New York, a plaintiff must have been in possession for three years, claiming an estate in fee, for life, or for a term of years not less than ten: Ford v. Belmont, 69 N. Y. 567; Austin v. Goodrich, 49 N. Y. 266; Diefendorf v. Diefendorf, 132 N. Y. 100, 30 N. E. 375; Pom. Eq. Jur., § 1397, note. The actual possession need be of part only of a tract, where no one is in actual possession of the remainder; see Yard v. Ocean Beach Assn., 49 N. J. Eq. 306, 24 Atl. 729.

⁵⁰ Fulkerson v. Chisna M. & I. Co., 122 Fed. 782; Blanchard v. Tyler, 12 Mich. 339, 86 Am. Dec. 57; Umatilla Irr. Co. v. Umatilla Imp. Co., 22 Or. 366, 30 Pac. 30 (quoting statute). Possession by a tenant is insufficient when the action is brought by the landlord against the tenant in possession setting up a claim adverse to his landlord: Van Winkle v. Hinckle, 21 Cal. 342.

⁵¹ In Rosenbaum v. Foss, 4 S. D. 184, 56 N. W. 114, the court says: "It will be observed that a party, to be entitled to maintain

an equitable interest as well as the holder of the legal title may maintain the suit to determine adverse claims.⁵²

an action under this section, is not required to have any specific interest in or lien upon the property, real or personal, but that it is sufficient to maintain the action that there is reasonable apprehension that if the instrument sought to be canceled is left outstanding, it may cause serious injury to him and that as to him it is void or voidable." The owner of an estate or interest in land less than an estate in fee may sue: *Pierce v. Felter*, 53 Cal. 18; *Stoddart v. Burge*, 53 Cal. 394. A possessory title in or upon public lands is sufficient: *Pralus v. Pacific etc. Min. Co.*, 35 Cal. 30; see, also, *Wilson v. Madison*, 55 Cal. 5; *Merced Min. Co. v. Fremont*, 7 Cal. 317, 68 Am. Dec. 262; *Mt. Rosa Min. etc. Co. v. Palmer*, 26 Colo. 56, 77 Am. St. Rep. 245, 56 Pac. 176, 50 L. R. A. 289. In *Knight v. Alexander*, 38 Minn. 384, 8 Am. St. Rep. 675, 38 N. W. 796, it was held that one in possession may maintain the action without further proof of his interest.

⁵² *Pioneer Land Co. v. Maddux*, 109 Cal. 633, 50 Am. St. Rep. 67, 42 Pac. 295; *Tuffree v. Polhemus*, 108 Cal. 670, 41 Pac. 806; *Brown v. Wilson*, 21 Colo. 309, 52 Am. St. Rep. 228, 40 Pac. 688; *Stanley v. Holliday*, 130 Ind. 464, 30 N. E. 634; *Vier v. Detroit*, 111 Mich. 646, 70 N. W. 139; *Eayrs v. Nason*, 54 Neb. 143, 74 N. W. 408. "Undoubtedly where a party holding a legal title seeks to enforce it as against a person in possession claiming under an invalid title or one which the party complaining claims to be such, the only proper remedy is ejectment, and that remedy is proper. But where a party has an equitable cause of action against another, arising within any recognized rule of equity jurisdiction, such right can be enforced in equity, whether the complainant is in possession or not": *King v. Carpenter*, 37 Mich. 363 (in a state of the first class). That the statutes do not deprive a person out of possession of any equitable relief to which he would otherwise be entitled, see this case, and *Pom. Eq. Jur.*, § 1397, note 1.

The suit may be maintained by the grantee of a devisee before distribution of the estate against anyone but the executor or administrator: *Jordan v. Fry*, 98 Cal. 264, 33 Pac. 95. Title to a homestead interest may be quieted: *McKinnie v. Shaffer*, 74 Cal. 614, 16 Pac. 509. An administrator has a title which may be quieted: *Pennie v. Hildreth*, 81 Cal. 127, 22 Pac. 398. The equitable owner of swamp lands, who has paid the state in full, so that the state is merely a naked trustee of the legal title, has an interest which may be quieted against a subsequent patentee from the state: *Pioneer Land Co. v. Maddux*, 109 Cal. 633, 50 Am. St. Rep. 67, 42 Pac. 295.

§ 739. **Nature of the Adverse Claim.**—In general, it may be said that the action may be brought against any person claiming an adverse interest, of whatever kind.⁵³ The words “claim an estate or interest,” which are the usual words of the statutes, are used in a broad sense and are not technical in their meaning.⁵⁴ Though the defendant’s claim is worthless, and void upon its face, yet if it be hostile to the plaintiff and cloud his title so as to depreciate the market value in the estimation of business men, the action can be maintained.⁵⁵ It is also

In California it is held that the action cannot be brought by the holder of an equitable title against the holder of the legal title; the proper form of action in such a case is one to enforce the trust by obtaining a conveyance of the legal title: See *Tuffree v. Polhemus*, 108 Cal. 670, 41 Pac. 806; *Shanahan v. Crampton*, 92 Cal. 9, 28 Pac. 50; *Nidever v. Ayers*, 83 Cal. 39, 23 Pac. 192; *Bryan v. Tormey*, 84 Cal. 126, 24 Pac. 319; *Harrigan v. Mowry*, 84 Cal. 456, 22 Pac. 658, 24 Pac. 48.

⁵³ *Landregan v. Peppin*, 94 Cal. 465, 467, 29 Pac. 771; *Fry v. Summers*, 4 Idaho, 424, 39 Pac. 1118; *Clark v. Darlington*, 7 S. D. 148, 58 Am. St. Rep. 835, 63 N. W. 771. Relief was granted in the following cases: Against purchasers on execution: *Lovelady v. Burgess*, 32 Or. 418, 52 Pac. 25; *Maxon v. Ayers*, 28 Wis. 612; against the holder of a tax certificate: *Dean v. City of Madison*, 9 Wis. 402; *Clark v. Darlington*, 7 S. D. 148, 58 Am. St. Rep. 835, 63 N. W. 771; against claimant of an invalid mortgage lien: *Withers v. Jack*, 79 Cal. 297, 12 Am. St. Rep. 143, 21 Pac. 824. “Nor is it necessary that the adverse claim should be of any particular character, . . . the statute does not confine the remedy to the case of an adverse claimant setting up a legal title or even an equitable one; but the act intended to embrace every description of claim whereby the plaintiff might be deprived of the property, or its title clouded, or its value depreciated, or whereby the plaintiff might be incommoded or damnified by the assertion of an outstanding title (*Head v. Fordyce*, 17 Cal. 151; *Horn v. Jones*, 28 Cal. 204; *Joyce v. McAvoy*, 31 Cal. 273, 89 Am. Dec. 172); and the rule may be even more broadly stated, viz.: that the action may be maintained by the owner of property to determine any adverse claim whatever”: *Castro v. Barry*, 79 Cal. 446, 21 Pac. 946.

⁵⁴ *Goldberg v. Taylor*, 2 Utah, 486; see, also, cases cited in preceding note.

⁵⁵ *Campbell v. Disney*, 93 Ky. 41, 18 S. W. 1027; *Bogert v. City of Elizabeth*, 27 N. J. Eq. 568; *Murphy v. Sears*, 11 Or. 127, 4 Pac.

immaterial whether or not the defendant claims under the same or a different and independent source of title from the plaintiff's.⁵⁶ Neither is it material whether or not the defendant has actually asserted such claim before the commencement of the action, as it is one of the essential features of this action, wherein it differs from the original equitable suit to quiet title, that the plaintiff need not wait until proceedings are brought against him.⁵⁷

There is some diversity of opinion as to whether the action will lie against a mere lien claimant. Under those statutes permitting the action to be brought against anyone asserting a "claim" it seems that the action lies against the assertion of a lien, but where the statute permits the action only against one claiming "title" or an "estate," it cannot be brought against one who asserts a mere lien.⁵⁸

§ 740. Service of Process by Publication.—The action is a clear instance of those suits *quasi in rem*, in which substituted service or service by publication may be authorized on defendants not found within the jurisdic-

471. It is immaterial that the adverse claim is invalid upon its face: *Kittle v. Bellegarde*, 86 Cal. 556, 25 Pac. 55; *Palmer v. Yorks*, 77 Minn. 20, 79 N. W. 587; *Bogert v. City of Elizabeth*, 27 N. J. Eq. 568; *Rumbo v. Gay Mfg. Co.*, 129 N. C. 9, 39 S. E. 581; *Moores v. Clackamas County*, 40 Or. 536, 67 Pac. 662; *Kinsman v. Spokane*, 20 Wash. 118, 72 Am. St. Rep. 24, 54 Pac. 934; *Fox v. Williams*, 92 Wis. 320, 66 N. W. 357; *Broderick v. Cary*, 98 Wis. 419, 74 N. W. 95.

56 *Walton v. Perkins*, 33 Minn. 357, 23 N. W. 527.

57 *Bulwer Con. Min. Co. v. Standard Con. Min. Co.*, 83 Cal. 589, 23 Pac. 1102; *Curtis v. Sutter*, 15 Cal. 289.

58 To the effect that the action is maintainable, see *Kittle v. Bellegarde*, 86 Cal. 564, 25 Pac. 55; *Alt v. Graff*, 65 Minn. 191, 68 N. W. 9; *Wilson v. Hooser*, 76 Wis. 387, 45 N. W. 316. *Contra*, *Fejervary v. Langer*, 9 Iowa, 159; *Jersey City v. Lembeck*, 31 N. J. Eq. 255; *Power v. Bowdle*, 3 N. D. 107, 44 Am. St. Rep. 511, 54 N. W. 404, 21 L. R. A. 328.

tion; and such service is expressly authorized in this action by the statutes of many of the states.⁵⁹

§ 741. Pleading—On the Part of Plaintiff.—In accordance with the general rule relating to statutory proceedings, it is sufficient if the bill or complaint embodies the essential averments of the statute.⁶⁰ It is sufficient to allege the title or interest of the plaintiff in the land, and that he has the possession thereof (where the statute requires the plaintiff to be in possession). Under those statutes where possession in the plaintiff is sufficient, ownership in the plaintiff need not be alleged.⁶¹ It is not generally necessary to allege the nature or extent of the defendant's claim, nor is it necessary to point out the defects therein. It is sufficient to aver that the

⁵⁹ *Arndt v. Griggs*, 134 U. S. 316, 10 Sup. Ct. 557, 33 L. ed. 918; *Perkins v. Wakeham*, 86 Cal. 580, 21 Am. St. Rep. 67, 25 Pac. 51; *Essig v. Lower*, 120 Ind. 239, 21 N. E. 1090; *Wood v. Nicolson*, 43 Kan. 461, 23 Pac. 587; *Scarborough v. Myrick*, 47 Neb. 795, 66 N. W. 867. As sustaining the validity of such service by publication, see, also, *ante*, volume I, chapter I.

⁶⁰ *Paton v. Lancaster*, 38 Iowa, 494.

⁶¹ To the effect that allegations of title and possession are sufficient, see *Adler v. Sullivan*, 115 Ala. 582, 22 South. 87. To the effect that allegations of title and that plaintiff is entitled to possession are sufficient, see *Stanley v. Holliday*, 130 Ind. 464, 30 N. E. 634. To the effect that an allegation of ownership is sufficient, see *Ely v. New Mexico & A. R. Co.*, 129 U. S. 291, 9 Sup. Ct. 293, 32 L. ed. 688. To the effect that allegations of title and that land is unoccupied are sufficient, see *Wakefield v. Day*, 41 Minn. 344, 43 N. W. 71. In an action to quiet title, if the plaintiff is not entitled to possession, the complaint must show the nature of his interest or title, and that it is consistent with the right of possession in the other: *Pittsburgh etc. R. R. Co. v. O'Brien*, 142 Ind. 218, 41 N. E. 528. The complaint under the adverse claim statute need only aver that the plaintiff claims an interest in the land, and that the defendant asserts a claim of title adverse to the claim of the plaintiff. An allegation of the ownership of the fee is unnecessary: *Stoddart v. Burge*, 53 Cal. 394.

defendant claims an estate or interest in the property hostile to that of plaintiff and that he has none.⁶²

§ 742. Defendant's Pleadings.—If the defendant does not claim any adverse estate or interest he should file his disclaimer.⁶³

Where the defendant does not disclaim but puts in an answer, he must set up therein whatever right, title or interest he may claim in the property.⁶⁴ As the

⁶² *Ely v. New Mexico etc. R. R. Co.*, 129 U. S. 291, 9 Sup. Ct. 293, 32 L. ed. 688; *Adler v. Sullivan*, 115 Ala. 582, 22 South. 87; *Castro v. Barry*, 79 Cal. 443, 21 Pac. 946; *Amter v. Conlan*, 22 Colo. 150, 43 Pac. 1002; *Tolleston Club of Chicago v. Clough*, 146 Ind. 93, 43 N. E. 647; *Entreken v. Howard*, 16 Kan. 551; *Campbell v. Disney*, 93 Ky. 41, 18 S. W. 1027; *Scorpion Silver Min. Co. v. Marsano*, 10 Nev. 370; *Monighoff v. Sayre*, 41 N. J. Eq. 113, 3 Atl. 397; *Clark v. Darlington*, 7 S. D. 148, 58 Am. St. Rep. 835, 63 N. W. 771; *Glassman v. O'Donnell*, 6 Utah, 446, 451, 24 Pac. 537. But in the following cases it was held that the nature of the defendant's claim or its invalidity must be shown: *McDonald v. Early*, 15 Neb. 63, 17 N. W. 257; *King v. Higgins*, 3 Or. 406; *Page v. Kennan*, 38 Wis. 320. In an action to quiet title the allegation in the complaint that "defendant claims some interest in the land adverse to plaintiff's, which claim is without right and unfounded, and a cloud on plaintiff's title," is sufficient, even though the land in issue consists of several parcels: *Tolleston Club of Chicago v. Clough*, 146 Ind. 93, 43 N. E. 647. In an action to quiet title, an allegation in the complaint that plaintiff is seised in fee simple and is in possession of the lands in question, and that defendant asserts an unfounded claim of title in the premises, is a sufficient averment that defendant's claim of title is adverse: *Dumont v. Dufore*, 27 Ind. 263.

⁶³ *Bulwer Con. Min. Co. v. Standard Con. Min. Co.*, 83 Cal. 589, 23 Pac. 1102; *Miller v. Curry*, 124 Ind. 48, 24 N. E. 219, 374; *Osborn v. Board of Suprs. of Hinds County*, 71 Miss. 19, 14 South. 457.

In the answer of defendant to a bill by the holder of the legal title in possession of land for the release of an adversary claim it is not sufficient to disclaim; there must be an offer to release: *Loftus v. Cotes*, 1 T. B. Mon. (Ky.) 97. In an action under Gen. Stats. 1866, c. 75, § 1, to determine an adverse claim to land, an answer denying any interest therein other than the lien of a tax sale certificate thereon amounts to a disclaimer: *Brackett v. Gilmore*, 15 Minn. (Gil. 190) 245.

⁶⁴ *Landregan v. Peppin*, 94 Cal. 465, 29 Pac. 771; *Weston v. Estey*,

basis of the right to require the adverse interest to be adjudicated is the plaintiff's own interest or ownership in the land, where such interest or ownership is controverted by a general denial, a sufficient issue of fact is raised.⁶⁵

§ 743. **Judgment or Decree.**—While a decree quieting title is not, strictly speaking, *in rem*, it fixes and settles the title to real estate, and to that extent it partakes of the nature of a judgment *in rem*.⁶⁶ The court may settle finally and adjudge whether the defendant has any right, interest or estate in the lands, and declare what such interest, estate or right may be,⁶⁷ or the de-

22 Colo. 341, 45 Pac. 367. To constitute a defense to an action under the statute to determine adverse claims, the defendant must set up some adverse claim to or interest in the property, and he must show the nature of such claim: *Weston v. Estey*, 22 Colo. 341, 45 Pac. 367. Peaceable possession in the complainant is a jurisdictional fact in a bill to quiet title. If the defendant in his answer to such bill deny that the complainant is in peaceable possession of the premises in question, the issue thereby raised is preliminary to the main issue in the cause, and the defendant is entitled to have it tried in this court before it shall grant an issue to be sent to a court of law to try the question of title or no title: *Beale v. Blake*, 45 N. J. Eq. 668, 18 Atl. 300.

⁶⁵ *Pennie v. Hildreth*, 81 Cal. 127, 22 Pac. 398; *Toland v. Toland*, 123 Cal. 140, 57 Pac. 681; *Adams v. Crawford*, 116 Cal. 495, 48 Pac. 488. In an action to quiet title by an administrator, a general denial puts in issue plaintiff's ownership of the land and the fact that he is administrator, and it is not demurrable on the ground that it does not set up defendant's claim, or disclaimer: *Pennie v. Hildreth*, 81 Cal. 127, 22 Pac. 398.

⁶⁶ *Perkins v. Wareham*, 86 Cal. 580, 21 Am. St. Rep. 67, 25 Pac. 51.

⁶⁷ *Pennie v. Hildreth*, 81 Cal. 127, 22 Pac. 398; *Satterwhite v. Sherley*, 127 Ind. 59, 25 N. E. 1100; *Blatchford v. Conner*, 40 N. J. Eq. 205, 1 Atl. 16, 7 Atl. 354. A decree that the plaintiff is the owner in fee simple of the land and that one claiming the legal title thereto under a deed absolute in form has no interest therein except that of a mortgagee, "to be determined by proper suit of foreclosure," merely reserves the right to the mortgagee to have his interest de-

fendant's claims may be decreed to be invalid,⁶⁸ or it may grant an injunction, as ancillary to the principal relief, restraining the assertion of such claims,⁶⁹ or in those states where the statute, by its express terms or by its general language, permits the action to be brought to remove a cloud, deeds and instruments may be or-

terminated as such mortgagee, without declaring what that interest is, and does not exclude him from enforcing his rights as such mortgagee, though it is erroneous in undertaking to quiet the title of the mortgagor, and then disturbing it again by declaring the mortgagee's right to foreclose: *Brandt v. Thompson*, 91 Cal. 458, 27 Pac. 763. The defendant in an action to quiet title may specially plead that the plaintiff has only a lien or any interest less than he claims, and that the defendant has an equitable title or any interest in the land paramount or subordinate to that of the plaintiff; and the decree of the court should declare the rights of the parties in the property accordingly. It is immaterial whether plaintiff's title is a mortgage or a deed of trust held as security, as the defendant would in either case have the right to a judgment declaring just what interests in the property were held by each of the parties: *Pennie v. Hildreth*, 81 Cal. 127, 22 Pac. 398. But where the defendant in his answer prays no relief except that it be adjudged whether he has any interest, etc., in the land, affirmative relief, such as restraining the complainant from asserting any further claim, should not be decreed to him: *Cheney v. Nathan*, 110 Ala. 254, 266, 55 Am. St. Rep. 26, 20 South. 99.

⁶⁸ *People v. Center*, 66 Cal. 551, 5 Pac. 263, 6 Pac. 481; *Windom v. Wolverton*, 40 Minn. 439, 42 N. W. 295. A judgment in an action under C. C. P., § 738, that the defendants have no right, title or interest in, or lien upon the land in question is equivalent to a judgment canceling all papers and proceedings upon which the adverse claim is founded, and has the same effect; and defendants who make default, and admit that the adverse claim is void upon its face, cannot be injured by an express cancellation in the judgment of assessments and certificates of sale upon which their adverse claim is alleged to be founded: *Kittle v. Bellegarde*, 86 Cal. 556, 25 Pac. 55.

⁶⁹ *Brooks v. Calderwood*, 34 Cal. 563; *Green v. Glynn*, 71 Ind. 336. Injunction in judgment against executing deeds in pursuance of the certificates of sale upon which the adverse claim is founded is proper in so far as it is ancillary to the principal relief and necessary to make that relief effectual; and if it is unnecessary to enjoin the execution of void deeds, the injunction is superfluous and cannot injure the defendants: *Kittle v. Bellegarde*, 86 Cal. 556, 25 Pac. 55.

dered to be canceled.⁷⁰ When the plaintiff is out of possession, and the action is authorized to be brought by one out of possession, a writ of possession may be granted in the decree, whenever the justice of the case demands it.⁷¹

⁷⁰ *Kittle v. Bellegarde*, 86 Cal. 556, 25 Pac. 55; *McLennan v. McDonnell*, 78 Cal. 273, 20 Pac. 566.

⁷¹ *Kitts v. Austin*, 83 Cal. 172, 23 Pac. 290; *People v. Center*, 66 Cal. 551, 5 Pac. 263, 6 Pac. 481; *Wyland v. Mendel*, 78 Iowa, 739, 37 N. W. 160. In an action to determine an adverse claim when it has been adjudicated that the defendant has no adverse claims or interests in the property in controversy, the subject of litigation is exhausted; and if it appears that the plaintiff is out of possession, the judgment necessarily entitles him to possession. Nor is it essential that the judgment itself should direct the issuance of the writ of possession, but the law is fully satisfied by a supplemental order to that effect: *Landregan v. Peppin*, 94 Cal. 465, 29 Pac. 771.

CHAPTER XXXVII.

SPECIFIC PERFORMANCE OF CONTRACTS—GROUND
AND EXTENT OF THE JURISDICTION.

ANALYSIS.

- § 744. Ground of the jurisdiction.
- §§ 745-761. Extent of the jurisdiction.
- §§ 745-754. Inadequacy of damages.
 - § 745. Contracts concerning lands.
 - § 746. Contract to make a will of lands.
 - § 747. Specific performance in favor of vendor.
 - § 748. Contracts concerning chattels—Delivery up of unique, etc., chattels.
 - § 749. Same; other grounds for relief.
 - § 750. Things in action.
 - § 751. Patents.
 - § 752. Shares of stock.
 - § 753. Miscellaneous agreements.
 - § 754. Awards.
 - § 755. No relief when decree would be nugatory—Partnership agreements.
 - § 756. No relief when performance depends on consent of a third person.
- §§ 757-761. Specific performance refused when court cannot render or enforce a decree.
 - § 758. Arbitration agreements, etc.
 - § 759. Contracts for personal services.
 - § 760. Contracts for building or construction.
 - § 761. Other contracts requiring continuous acts—Railroad operating agreements.

§ 744. Ground of the Jurisdiction.—“The remedy of the specific performance of contracts is purely equitable, given as a substitute for the legal remedy of compensation, whenever the legal remedy is inadequate or impracticable. In the language of Lord Selborne: ‘The principle which is material to be considered is, that the court gives specific performance instead of damages

only when it can by that means *do more perfect and complete justice*.¹ The jurisdiction depending upon this broad principle is exercised in two classes of cases: 1. Where the subject-matter of the contract is of such a special nature, or of such a peculiar value, that the damages, when ascertained according to legal rules, would not be a just and reasonable substitute for or representative of that subject-matter in the hands of the party who is entitled to its benefit; or in other words, where the damages are *inadequate*; 2. Where, from some special and practical features or incidents of the contract inhering either in its subject-matter, in its terms, or in the relations of the parties, it is impossible to arrive at a legal measure of damages at all, or at least with any sufficient degree of certainty, so that *no* real compensation can be obtained by means of an action at law; or in other words, where damages are *impracticable*.²

1 "Wilson v. Northampton etc. Ry., L. R. 9 Ch. App. 279, 284. The foundation and measure of the jurisdiction is the desire to do justice, which the legal remedy would fail to give. This justice is primarily due to the plaintiff, but not exclusively, for the equities of the defendant are also protected. Specific performance is, therefore, a conscious attempt on the part of the court to do complete justice to both the parties with respect to all the judicial relations growing out of the contract between them: See Buxton v. Lister, 3 Atk. 383; Wright v. Bell, 5 Price, 325, 328, 329; Adderley v. Dixon, 1 Sim. & St. 607, 610; Ord v. Johnston, 1 Jur., N. S., 1063, 1064. It follows, therefore, that the remedial right, if it exists at all, must be mutual; each party must be able to enforce the remedy against the other": Pom. Eq. Jur., § 1401, note. As to the last statement, see further, §§ 747, 769-776, *post*.

2 Pom. Eq. Jur., § 1401. "This ground of the jurisdiction includes two classes of cases: 1. Where, from the lack of some legal formality or condition in the contract, no action at law can be maintained; 2. Where, from some peculiar feature of the contract, either in its subject-matter or in its terms, or in the relations of the parties, it is impossible to arrive at a legal measure of damages at all, or at least with any sufficient degree of certainty": Pom. Eq. Jur., § 1403. "Under this head are included,—1. Contracts in which the

§ 745. **Extent of the Jurisdiction—Inadequacy of Damages—Contracts Concerning Lands.**—"The object of the present discussion is to determine the general classes of contracts which come within the jurisdiction, and which may be specifically enforced. Whether any particular contract belonging to one of these classes will actually be thus enforced depends upon other equitable elements, to be described hereafter. *Lands:* Where land, or any estate therein, is the subject-matter of the agreement, the inadequacy of the legal remedy is well settled, and the equitable jurisdiction is firmly established.³ Whenever a contract concerning real property

plaintiff has not performed, or even cannot perform, all the conditions on his part, so as to maintain an action at law, but which equity still may treat as binding and enforce. In such cases, if the contract is otherwise a proper one, equity will decree a specific performance with such allowances or compensations as are just: *Mortlock v. Buller*, 10 Ves. 292, 305, 306; *Stewart v. Alliston*, 1 Mer. 26, 32 [see *post*, chapter XLI]. Even where the partial failure or inability results from the plaintiff's own fault: *Davis v. Hone*, 2 Schoales & L. 341, 347; *Voorhees v. De Meyer*, 2 Barb. 37; *Coale v. Barney*, 1 Gill & J. 324; *McCorkle v. Brown*, 9 Smedes & M. 167. [See *Day v. Hunt*, 112 N. Y. 191, 19 N. E. 414; *post*, chapter XLI.] 2. Contracts not valid at all at law, but which equity treats as binding on the conscience. By far the most important are verbal contracts concerning land which are invalid by the statute of frauds, but which, if part performed, equity will enforce: *Kirk v. Bromley Union*, 2 Phill. Ch. 640; *Gough v. Crane*, 3 Md. Ch. 119; *Crane v. Gough*, 4 Md. 316 [see *post*, chapter XL, where this subject is treated]. Under this head are also included certain agreements void at the old common law, but which equity enforces; e. g., assignments of expectancies; agreements to assign things in action; contracts between a man and woman, who afterwards marry: *Cannel v. Buckle*, 2 P. Wms. 243; *Gould v. Womack*, 2 Ala. 83. [See *Pom. Eq. Jur.*, § 1297.] 3. Contracts incomplete in their terms: *Buxton v. Lister*, 3 Atk. 383; *Doloret v. Rothschild*, 1 Sim. & St. 590; *Phillips v. Thompson*, 1 Johns. Ch. 131": *Pom. Eq. Jur.*, § 1403, note.

3 The remedy of specific performance is sometimes spoken of as one of the most ancient heads of equity jurisdiction. Professor Ames, however (1 *Green Bag*, 26; 1 *Ames, Cas. Eq. Jur.*, 37), is of the opinion that the cases relied on to support this belief were in-

is in its nature and incidents entirely unobjectionable,—when it possesses none of those features which, in ordinary language, influence the discretion of the court,—it is as much a matter of course for a court of equity to decree its specific performance as it is for a court of law to give damages for its breach.”⁴ Among other contracts thus enforced are agreements to give or renew a lease,⁵ contracts for mortgages,⁶ family settle-

stances of other kinds of relief, and that with one exception, dating from 1458, no clear instance of specific performance is to be found earlier than the middle of the sixteenth century. Soon after that, however, the remedy became common, as applied to contracts concerning land. The origin and early grounds of the jurisdiction concerning land contracts are thus conjectural. The accepted explanation of the rule that specific performance of such contracts is enforced may be found in the following passages: *Adderley v. Dixon*, 1 Sim. & St. 607: “Courts of equity decree the specific performance of contracts, not upon any distinction between realty and personality, but because damages at law may not in the particular case afford a complete remedy. Thus, a court of equity decrees performance of a contract for land, not because of the real nature of the land, but because damages at law, which must be calculated upon the general money value of land, may not be a complete remedy to the purchaser, to whom the land *may* have a peculiar and special value.” *Cud v. Rutter*, 1 P. Wms. 570: “One parcel of land may vary from, and be more commodious, pleasant, or convenient than another parcel of land.” It should be carefully observed, however, that the remedy in equity is not refused because, in the individual case, these reasons may not hold good and damages in an action at law may be adequate relief: See 1 Pom. Eq. Jur., § 221.

⁴ Pom. Eq. Jur., § 1402. See note to this section for a collection of various instances of contracts concerning land specifically enforced.

⁵ *Furnival v. Crew*, 3 Atk. 83, 87; *Tritton v. Foote*, 2 Brown Ch. 636; *Burke v. Smyth*, 3 Jones & L. 193; *Moss v. Barton*, L. R. 1 Eq. 474; *Buckland v. Papillon*, L. R. 2 Ch. App. 67; *Clark v. Clark*, 49 Cal. 586; *Myers v. Silljacks*, 58 Md. 319; *Switzer v. Gardner*, 41 Mich. 164, 2 N. W. 191; *Wallace v. Scoggins*, 17 Or. 476, 21 Pac. 558.

⁶ *Ashton v. Corrigan*, L. R. 13 Eq. 76; *Hermann v. Hodges*, L. R. 16 Eq. 18; *De Pierres v. Thorn*, 4 Bosw. 266; *McClintock v. Laing*, 22 Mich. 212 (oral agreement to give a mortgage; terms of the agreement not sufficiently clear and specific); *Dean v. Anderson*,

ments,⁷ bonds to convey land,⁸ judicial sales,⁹ and other contracts concerning land.¹⁰ The enforcement of contracts concerning land in another country or state is described in a previous section.¹¹

§ 746. **Contract to Make a Will of Lands.**—A contract to devise land, though looked upon with some disfavor as a non-testamentary¹² method of disposition of property at death, and consequently not subject to the statute of wills, will yet be in effect enforced by equity when the contract is clear, definite, and without doubt.¹³

34 N. J. Eq. 496, and cases collected in reporter's note (parol agreement); *Hicks v. Turek*, 72 Mich. 311, 40 N. W. 339; *Irvine v. Armstrong*, 31 Minn. 216, 17 N. W. 343. See, also, § 753, *post*.

7 *Wistar's Appeal*, 80 Pa. St. 484; *Stratton v. Stratton*, 53 N. H. 473, 42 Am. Rep. 604 (ante-nuptial agreement for husband's use of wife's property).

8 *Ewins v. Gordon*, 49 N. H. 444; *St. Paul Division etc. v. Brown*, 11 Minn. 356.

9 *Henry v. McKerlie*, 78 Mo. 416; *Gregory v. Tingley*, 18 Neb. 319, 25 N. W. 88. It has been held, however, that although a purchase at a foreclosure sale is a contract, it cannot be enforced in the usual way by specific performance. (Citing *Miller v. Collyer*, 36 Barb. 250). Plaintiff's remedy is by a motion to compel the purchaser to complete his contract: *Burton v. Linn*, 47 N. Y. Supp. 835, 21 App. Div. 609.

10 *Nunez v. Morgan*, 77 Cal. 427, 19 Pac. 753; *Hermann v. Babcock*, 103 Ind. 461, 3 N. E. 142.

11 See volume I, chapter I.

12 In *re Parkin*, [1892] 3 Ch. D. 510, 517 (the court here refused to extend the rule, and would not give specific performance of a contract to devise on the part of one who was merely donee of a testamentary power of appointment); *Winne v. Winne*, 166 N. Y. 263, 82 Am. St. Rep. 647, 59 N. E. 832 (here the court observes that a contract to devise lands is not a testamentary disposition of property and not subject to the statute of wills).

13 *Cassey v. Fitton* (1679), 2 Hargrave, Juridical Arguments, 296; *Laird v. Vila* (Minn.), 100 N. W. 656; *Austin v. Kuehn*, 211 Ill. 113, 71 N. E. 841; *Price v. Price*, 133 N. C. 494, 45 S. E. 855; *Johnson v. Hubbell*, 10 N. J. Eq. 332, 64 Am. Dec. 773; *Van Dyne v. Vreeland*, 11 N. J. Eq. 370; *Davison v. Davison*, 13 N. J. Eq. 246; *Young v. Young*, 45 N. J. Eq. 27, 16 Atl. 921; *Jones v. Martin*, 5

It is obvious that equity cannot compel direct specific performance of the contract to devise land by ordering the promisor to make the devise before his death, as performance is not due until the time of death. But equity will do what is equivalent to giving specific performance, by fastening a trust upon the land, in the heir or devisee, and enforcing conveyance by the representative holding the legal title in favor of the purchaser under the contract to devise.¹⁴ Before the death of the promisor, equity will enjoin any attempted conveyance of the land to a third party, as a fraud upon the promise of the contract to devise;¹⁵ or if it has been conveyed to a grantee with notice or without con-

Ves. 266; *Whiton v. Whiton*, 179 Ill. 32, 54, 53 N. E. 722; *Manning v. Pippen*, 86 Ala. 357, 363, 11 Am. St. Rep. 46, 5 South. 572; *Bolman v. Overall*, 80 Ala. 451, 60 Am. Rep. 107, 2 South. 624; *Logan v. Weinholt*, 7 Bligh, 57, 59; *Gould v. Mansfield*, 103 Mass. 408, 4 Am. Rep. 573; *McCullom v. Mackrell*, 13 S. D. 262, 83 N. W. 255; *Teske v. Dittbemer* (Neb.), 98 N. W. 57; *Walton v. Walton*, 7 Johns. Ch. 258; *Knollys v. Alcock*, 5 Ves. 649. The law is thus stated in *Bolman v. Overall*, 80 Ala. 451, 60 Am. Rep. 107, 2 South. 624: "There is nothing in this contract which is repugnant to public policy. All the authorities agree that one may, for a valuable consideration, renounce the absolute power to dispose of his estate at pleasure, and bind himself by contract to dispose of his property by will to a particular person, and that such contract may be enforced in the courts after his decease, either by an action against the personal representative, or, in a proper case, by bill in the nature of specific performance against his heirs, devisees, or personal representatives. . . . The theory on which the courts proceed is to construe such agreement . . . to bind the property of the testator or intestate so far as to fasten a *trust* on it in favor of the promisee, and to enforce such trust against the heirs, and personal representatives of the deceased, or others holding under them charged with notice of the trust."

¹⁴ *Teske v. Dittbemer* (Neb.), 98 N. W. 57; *Price v. Price*, 133 N. C. 494, 45 S. E. 855.

¹⁵ *Whiton v. Whiton*, 179 Ill. 32, 55, 73 N. E. 722; *Logan v. Weinholt*, 7 Bligh, 57. See, also, *Jones v. Martin*, 5 Ves. 266; *Johnson v. Hubbell*, 10 N. J. Eq. 332, 64 Am. Dec. 773; *Van Dyne v. Vreeland*, 11 N. J. Eq. 370; *Davison v. Davison*, 13 N. J. Eq. 246.

sideration, equity will compel the land either to be held in trust for the devisee-purchaser, or to be reconveyed to the grantor.¹⁶ Equity will construe the contract to devise strictly against the complainant, so as not to interfere with freedom of testamentary disposition. It is said, referring to a *parol* contract to devise, "In cases of this sort it will not satisfy the requirements of the law to show that there was an understanding of an indefinite character, leaving its terms more or less to inference."¹⁷

§ 747. *Specific Performance in Favor of Vendor.*—It is well settled, with scarcely any dissent, that specific performance is granted in favor of a vendor of land as freely as in favor of a vendee, though the relief actually obtained by him is usually only a recovery of money—the purchase price.¹⁸ Three theories have been advanced to explain this rule: (1) It is said that the

¹⁶ *Teske v. Dittbemer* (Neb.), 98 N. W. 57; *Johnson v. Hubbell*, 10 N. J. Eq. 332, 64 Am. Dec. 773; *Synge v. Synge*, [1894] 1 Q. B. 486.

¹⁷ *Grantham v. Gossett*, 182 Mo. 651, 81 S. W. 899; cited with approval in *Rosenwald v. Middlebrook* (Mo.), 86 S. W. 200. The latter case also cited *Kinney v. Murray*, 170 Mo. 674, 71 S. W. 197, where it is stated: "The proof of such a contract must be so cogent, clear, and forcible as to leave no reasonable doubt in the mind of the chancellor as to its terms or character." As to enforcement of *parol* contracts to devise, part performed, see *post*, §§ 826, 828.

¹⁸ "The suit by the vendor for the specific performance of an ordinary land contract is really brought for the recovery of money alone, and it differs from the suit to enforce a vendor's lien in the fact that the judgment is for the recovery of the money generally, and not out of the land itself as a special fund": 1 Pom. Eq. Jur., § 112, note 1. See, also, Pom. Spec. Perf., § 165, and cases cited. As examples of such suits, see *Raymond v. San Gabriel Val. L. & W. Co.*, 53 Fed. 883, 4 C. C. A. 89; *Hodges v. Kowing*, 58 Conn. 12, 18 Atl. 979, 7 L. R. A. 87; *Loveridge v. Shurtz*, 111 Mich. 618, 70 N. W. 132; *Moore v. Baker*, 62 N. J. Eq. 208, 49 Atl. 836 (citing Pom. Eq. Jur., §§ 1402, 1405, 1407); *Hammond v. Foreman*, 48 S. C. 175, 26 S. E. 212; *Gates v. Parmly*, 93 Wis. 294, 66 N. W. 253, 67 N. W. 739. But see *contra*, *Porter v. Frenchman's Bay etc. Co.*, 84 Me. 195, 24 Atl. 814.

vendor's remedy in law by damages is inadequate, since the measure of damages is the difference between the agreed price and the market value, whereas the vendor might for particular reasons stand in need of the whole sum agreed to be paid.¹⁹ The objection to this theory is, that it proves too much; since, if the same test were applied generally, damages might be an inadequate remedy in every instance of sale and purchase, of chattels as well as of land. (2) It is said that by the doctrine of equitable conversion the vendee is a trustee of the purchase price for the vendor, and the vendor, in obtaining specific performance, enforces this trust.²⁰ To this it may be answered, that it proves too little; for the doctrine of equitable conversion is not supposed to extend to contracts for the sale and purchase of chattels or things in action,²¹ yet the cases are not infrequent where such contracts have been enforced at the suit of the vendors therein.²² (3) The rule is more satisfactorily accounted for by reference to the doctrine of mutuality; viz., that where an equitable remedial right in the vendee is recognized, a corresponding remedial right should be admitted in favor of the vendor.²³ This

19 *Lewis v. Lechmere*, 10 Mod. 503. See, also, *Hodges v. Kowing*, 58 Conn. 12, 18 Atl. 979, 7 L. R. A. 87, where the remedy in damages is said to be inadequate; *Eckstein v. Downing*, 64 N. H. 248, 10 Am. St. Rep. 404, 9 Atl. 626.

20 Pom. Eq. Jur. (3d ed.), § 221, note 6; *Lewis v. Lechmere*, 10 Mod. 503.

21 Pom. Eq. Jur. (3d ed.), § 221, note 6.

22 See *Withy v. Cottle*, 1 Sim. & St. 174 (vendor of annuity); *Adderley v. Dixon*, 1 Sim. & St. 607 (vendor of debt); *Cogent v. Gibson*, 33 Beav. 557 (vendor of patent); *Kennedy v. Wexham*, Madd. & G. 355 (annuity); *Law v. Smith* (N. J. Eq.), 59 Atl. 327; *Bumgardner v. Leavitt*, 35 W. Va. 194, 13 S. E. 67, 12 L. R. A. 776. See, also, *Rothholz v. Schwartz*, 46 N. J. Eq. 477, 19 Am. St. Rep. 409, 10 Atl. 312.

23 Pom. Eq. Jur. (3d ed.), § 221, note 6; § 1401, note 1; *Lewis v. Lechmere*, 10 Mod. 503; *Withy v. Cottle*, 1 Sim. & St. 174; *Adderley*

is the usual explanation of the rule, and appears to reconcile most, if not all, of the cases.

§ 748. **Contracts Concerning Chattels—Delivery Up of Unique, etc., Chattels.**—The doctrine is well settled “that equity will not, in general, decree the specific performance of contracts concerning chattels, because their money value recovered as damages will enable the party to purchase others in the market of like kind and quality.”²⁴ Where, however, particular chattels have some special value to the owner over and above any pecuniary estimate,—the *pretium affectionis*,—and where they are unique, rare, and incapable of being reproduced by money damages, equity will decree a specific delivery of them to their owner, and the specific performance of contracts concerning them.”²⁵ “Analogous to this jur-

v. Dixon, 1 Sim. & St. 607; Cogent v. Gibson, 33 Beav. 557; Kennedy v. Wexham, Madd. & G. 355; Raymond v. San Gabriel Val. L. & W. Co., 53 Fed. 883, 4 C. C. A. 89; Phillips v. Berger, 2 Barb. 603. See, also, *ante*, § 744, and note 1.

²⁴ Hapgood v. Rosenstock, 23 Fed. 86; Graham v. Herlong (Fla.), 39 South. 111; Ridenbaugh v. Thayer (Idaho), 80 Pac. 229 (quoting Pom. Eq. Jur., § 1402); Equitable Gas Light Co. v. Baltimore Coal Tar & Mfg. Co., 63 Md. 285; Gottschalk v. Stein, 69 Md. 51, 13 Atl. 625; Northern Trust Co. v. Markell, 61 Minn. 271, 63 N. W. 735.

²⁵ Pom. Eq. Jur., § 1402. See, also, 1 Pom. Eq. Jur. (3d ed.), § 185, and cases collected in note (c). “This class includes,—1. Articles of special value to their owner, but of no general pecuniary value; and 2. Articles of such great rarity and value that they cannot be replaced by money,—paintings, statues, etc. The jurisdiction will be exercised to compel their delivery by one who wrongfully detains them, or to compel the specific execution of a contract for their sale or delivery”: Pom. Eq. Jur., § 1402, note. In *Pusey v. Pusey*, 1 Vern. 273, the bill was that an ancient horn which time out of mind had gone along with the plaintiff’s estate, and was delivered to his ancestors in ancient time to hold the land by, might be delivered up. In *Duke of Somerset v. Cookson*, 3 P. Wms. 389, the suit was to compel the delivery of an old silver patera having a Greek inscription and dedication to Hercules, which had been dug up on

isdiction and for the same reasons, equity will decree the delivery up to the lawful owner of deeds, and other

plaintiff's estate. *Fells v. Read*, 3 Ves. 70, was brought to recover a tobacco-box of a remarkable kind, which belonged to a club. *Ld. Ch. Loughborough* said: "The Pusey horn, the patera of the Duke of Somerset, were things of that sort of value that a jury might not give twopence beyond the weight. It was not to be cast to the estimation of people who had not those feelings. . . . It would be great injustice if an individual cannot have his property without being liable to the estimate of people who have not his feelings upon it." The dresses and regalia of a lodge of Free Masons were recovered in *Lloyd v. Loaring*, 6 Ves. 773; a box of jewels in *Saville v. Tankred*, 1 Ves. Sr. 101. Family pictures were ordered to be delivered up in *Lady Arundell v. Phipps*, 10 Ves. 139; title deeds and valuable paintings in *Lowther v. Lord Lowther*, 13 Ves. 95; a finely carved cherry stone in *Pearne v. Lisle*, Amb. 75, 77; in *Falcke v. Gray*, 4 Drew. 651, two very valuable jars. In the following cases specific performance was decreed: *Williams v. Carpenter*, 14 Colo. 17, 24 Pac. 558; *Brady v. Yost*, 6 Idaho, 273, 55 Pac. 542 ("newspaper business, printing plant, and material used in said business"). In the following cases delivery up of chattels was decreed:

Property of sentimental value.—*Pusey v. Pusey*, 1 Vern. 273 (the leading case); *Wilkinson v. Stitt*, 175 Mass. 581, 56 N. E. 830 (cup won as prize); *Onondaga Nation v. Thacher*, 61 N. Y. Supp. 1027, 29 Misc. Rep. 428 (affirmed, 53 App. Div. 561, 65 N. Y. Supp. 1014—wampum belts belonging to Indians); *Doek v. Doek*, 180 Pa. St. 14, 57 Am. St. Rep. 617, 36 Atl. 411 (private letters).

Slaves.—*Murphy v. Clark*, 9 Miss. (1 Smedes & M.) 221; *Hull v. Clark*, 22 Miss. (14 Smedes & M.) 187; *Horry v. Glover*, Riley Eq. 53, 2 Hill Eq. 515; *Young v. Burton*, 1 McMull. Eq. 255; *Bobo v. Grimke*, 1 McMull. Eq. 304; *Sims v. Shelton*, 2 Strob. Eq. 221; *Womack v. Smith*, 11 Humph. 478, 54 Am. Dec. 51.

Miscellaneous.—*Battalion Westerly Rifles v. Swan*, 22 R. I. 333, 84 Am. St. Rep. 849, 47 Atl. 1090 (books of a militia company—no value ascertainable in money). See, also, *Pom. Eq. Jur.*, § 185, where the author says: "The jurisdiction embraces suits to compel the restoration or delivery of possession of specific chattels of such a peculiar, uncommon, or unique character that they cannot be replaced by means of money, and are not susceptible of being compensated for by any practical or certain measure of damages, and in respect of which the legal actions of replevin, detinue, or trover do not furnish a complete remedy. This particular exercise of the jurisdiction extends, for a like reason, to suits to compel the delivery of deeds, muniments of title, and other written instruments,

written muniments of title.”²⁶ Where, however, the party seeking to recover the property has himself fixed a value at which he has agreed to sell, he cannot subsequently come into equity to obtain the specific delivery of the chattel.²⁷

§ 749. **Same—Other Grounds for Relief.**—An agreement to furnish articles necessary to the vendee and which the vendor alone can supply, either because their manufacture is guarded by a patent or for any similar reason, may be enforced, for it is impossible to ascertain how much the vendee would suffer from not being able to obtain such articles for use in his business.²⁸ “If a

the value of which cannot, with any reasonable certainty, be estimated in money.” Quoted in *Williams v. Carpenter*, 14 Colo. 477, 24 Pac. 558. For instances of the issuance of injunctions in aid of the remedy, see *Lloyd v. Loaring*, 6 Ves. 773; *Hart v. Herwig*, L. R. 8 Ch. App. 860.

²⁶ Pom. Eq. Jur., § 1402, note; Pom. Eq. Jur. (3d ed.), § 185, and cases in note (d). See, also, *Beresford v. Driver*, 14 Beav. 387, 16 Beav. 134; *Folsom v. McCague*, 29 Neb. 124, 45 N. W. 269 (contracts for sale of land); *Pattison v. Skillman*, 34 N. J. Eq. 344 (documents valuable to prove heirship); *Baum’s Appeal*, 113 Pa. St. 58, 4 Atl. 461 (to compel the delivery of a deed held in escrow); *Equitable Trust Co. v. Garis*, 190 Pa. St. 544, 70 Am. St. Rep. 644, 42 Atl. 1022, 44 Wkly. Not. Cas. 41; *McGowin v. Remington*, 12 Pa. St. 56, 51 Am. Dec. 584 (valuable private maps); *Kelly v. Lehigh Min. & Mfg. Co.*, 98 Va. 405, 81 Am. St. Rep. 736, 36 S. E. 511.

²⁷ *Dowling v. Betjemann*, 2 Johns. & H. 544.

²⁸ *Adams v. Messinger*, 147 Mass. 185, 6 Am. St. Rep. 679, 17 N. E. 491. See, also, *Hapgood v. Rosenstock*, 23 Fed. 86. In *Equitable Gas Light Co. v. Baltimore Coal Tar & Mfg. Co.*, 63 Md. 285, specific performance was decreed of a contract to sell coal tar which plaintiff needed in order to fulfill existing contracts, and which it would be impossible to obtain otherwise than by purchasing “in other and distant cities, and transporting the same at great expense and loss, the amount of which it is impossible to estimate in advance.” In *Gloucester Isinglass & Glue Co. v. Russia Cement Co.*, 154 Mass. 92, 26 Am. St. Rep. 214, 27 N. E. 1005, 12 L. R. A. 563, specific performance was decreed of a contract to

trust or fiduciary relation exists in reference to the chattels, if an express trust has been created by the contract or an implied trust has arisen from the acts or omissions of the parties, then equity will exercise its jurisdiction to compel the specific performance of such contract, whether the chattels are common or special, since the court will always enforce a trust.²⁹ Insolvency of the defendant, rendering him unable to respond in damages, is recognized by *dicta* in a few cases as a sufficient ground for relief, although damages, if collectible, would be an adequate remedy.³⁰

furnish fish skins to be used in the manufacture of glue. It appeared that fish skins are of a very limited production, that most of the producers were under contract with defendant, and that unless relief were given it would be very difficult if not impossible for defendant to carry on his business. See, also, *Rector of St. David's v. Wood*, 24 Or. 396, 41 Am. St. Rep. 860, 34 Pac. 18. See, however, *Pom. Spec. Perf.*, § 27.

²⁹ *Pom. Eq. Jur.*, § 1402, note, and cases cited. See, also, *Wood v. Rowcliffe*, 3 Hare, 304 (affirmed 2 Ph. 382).

³⁰ *Parker v. Garrison*, 61 Ill. 250; *Ames v. Witbeck*, 179 Ill. 458, 53 N. E. 969; *Clark v. Flint*, 22 Pick. 231, 33 Am. Dec. 733; *Avery v. Ryan*, 74 Wis. 591, 43 N. W. 317. In *Ridenbaugh v. Thayer* (Idaho), 80 Pac. 229, it is said that insolvency alone is not ground for relief. It is believed that in no case has insolvency alone been the ground for relief. The cases seem in conflict with sound principle in at least two respects. In the first place, such a rule makes one under such a contract a preferred creditor. In the second place, the inadequacy of the legal relief which is the basis of equitable remedies is ordinarily in the nature of that relief in cases of a certain type, not in the difficulty of collection of damages in the individual instance. See *Pom. Spec. Perf.*, §§ 26, 27.

Miscellaneous.—In a few cases it has been held that where a contract is to be performed in installments, that fact is sufficient to warrant relief: *Buxton v. Lister*, 3 Atk. 383; *Stuart v. Pennis*, 91 Va. 688, 22 S. E. 509. There seems very little reason in support of this view, and it has been distinctly repudiated in other cases: *Pollard v. Clayton*, 1 Kay & J. 462; *Fothergill v. Rowland*, 17 Eq. 132, 140.

In *Pollard v. Reardon*, 65 Fed. 848, 13 C. C. A. 171, 21 U. S. App. 639, delivery of goods which could not be replevied because in the

§ 750. **Things in Action.**—"Contracts for the sale or assignment of things in action may be enforced by the purchaser, by compelling a transfer and delivery, where the legal damages might be too uncertain and conjectural to constitute an adequate compensation."³¹ Accordingly, a contract for the sale of the uncertain dividends which might become payable from the estate of a bankrupt—in other words, for the sale of a debt due by a bankrupt—may be specifically enforced; for damages cannot accurately represent the value of future dividends, and to compel the purchaser to take such damages would be to compel him to sell at a conjectural price.³² Likewise, a contract for the sale of an annuity may be enforced in equity.³³

§ 751. **Patents.**—Equity courts will take jurisdiction to compel the specific performance of contracts for the conveyance of patent rights, either at the suit of the vendor or of the vendee.³⁴ The grounds for the juris-

custody of a collector was decreed. See, also, the following miscellaneous cases: *Raymond Syndicate v. Brown*, 124 Fed. 80; *Singer v. Carpenter*, 125 Ill. 117, 17 N. E. 761; *Hall v. Hiles*, 2 Bush, 532; *Williams v. Montgomery*, 148 N. Y. 519, 43 N. E. 57; and cases collected in 4 Pom. Eq. Jur., § 1402, note 6.

³¹ Pom. Eq. Jur., § 1402.

³² *Wright v. Bell*, 5 Price, 325; *Adderley v. Dixon*, 1 Sim. & St. 607; *Gottschalk v. Stein*, 69 Md. 51, 13 Atl. 625; *Cutting v. Dana*, 25 N. J. Eq. 265.

³³ In *Withy v. Cottle*, 1 Sim. & St. 174, *Clifford v. Turrell*, 1 Younge & C. Ch. 138, and *Kenney v. Wexham*, 6 Madd. 355, the agreements were for the purchase of annuities, and specific performance was had at the suit of the vendors. A contract for the payment of alimony to a divorced wife has been specifically enforced: *Fleming v. Peterson*, 167 Ill. 465, 47 N. E. 755, quoting the following cases as to annuities: *Keenan v. Handley*, 2 De Gex, J. & S. 283; *Carbery v. Weston*, 1 Brown Parl. C. 429; *Marshall v. Thompson*, 2 Munf. 412; *Swift v. Swift*, 3 Ir. Eq. 267.

³⁴ *Cogent v. Gibson*, 33 Beav. 557; *Hapgood v. Rosenstock*, 23 Fed. 86; *Hull v. Pitrat*, 45 Fed. 94; *Corbin v. Tracy*, 34 Conn. 325;

diction are two. In the first place, it is a thing which the vendor alone can supply; and we have already seen that this is treated by some authorities as sufficient to authorize relief. In the second place, damages for the breach cannot be accurately estimated, for the profits to be derived are future and conjectural.

§ 752. *Shares of Stock.*—The right to specific performance of contracts for the sale of corporate stock depends upon the character of the stock. In England it is held that a transfer of public stocks which are always to be had by any person who chooses to apply for them in the market will not be decreed, for damages are adequate.³⁵ Shares of railway and other private corporations, which are limited in number and cannot always be had in the

Adams v. Messinger, 147 Mass. 185, 6 Am. St. Rep. 679, 17 N. E. 491; *Electric Secret-Service Co. v. Gill-Alexander El. M. Co.*, 125 Mo. 140, 28 S. W. 486; *Merrill v. Miller*, 28 Mont. 134, 72 Pac. 423; *McFarland v. Stanton Mfg. Co.*, 53 N. J. Eq. 649, 51 Am. St. Rep. 647, 33 Atl. 962; *Spears v. Willis*, 151 N. Y. 443, 45 N. E. 849; *Reese's Appeal*, 122 Pa. St. 392, 15 Atl. 807; *Valley Iron Works Mfg. Co. v. Goodrick*, 103 Wis. 436, 78 N. W. 1096; *Fuller etc. Mfg. Co. v. Bartlett*, 68 Wis. 73, 60 Am. Rep. 838, 31 N. W. 747 (implied contract for a license to manufacture machines embodying defendant's invention). The inadequacy of damages in such cases was explained by *Carpenter, J.*, in *Corbin v. Tracy*, as follows: "All the data by which its value can be estimated are yet future and contingent. Experience may prove it to be worthless; another and better invention may supersede it; or it may itself be an infringement of some patent already existing. On the other hand, it may be so simple in its principle and construction as to defy all competition, and give its owner a practical monopoly of all branches of business to which it is applicable. In any event, its value cannot be known with any degree of exactness until after the lapse of time; and even then it is doubtful whether it can be ascertained with sufficient accuracy to do substantial justice between the parties by a compensation in damages." To the effect that a vendor is entitled to the relief, see *Cogent v. Gibson*, 33 Beav. 557. A parol contract to convey a patent may be specifically enforced: *Whitney v. Burr*, 115 Ill. 289, 3 N. E. 434.

³⁵ *Cud v. Rutter*, 1 P. Wms. 570.

market, stand upon a different footing, and equity may grant its relief.³⁶ The rules in the United States are narrower, and, it would seem, more in accord with principle. Specific performance will not be decreed if the shares are readily obtainable in the open market.³⁷ If, however, the shares have no market rating, and cannot easily be obtained elsewhere, damages will be inadequate and specific performance will be granted.³⁸

§ 753. **Miscellaneous Agreements.**—Specific performance may be had of a contract to insure, the jurisdiction being based upon the complications and embarrassments incident to an action at law to enforce the contract.³⁹ Relief may be had in equity either before or

³⁶ *Duncuft v. Albrecht*, 12 Sim. 189; *Poole v. Middleton*, 29 Beav. 646.

³⁷ See cases cited in following note.

³⁸ *Krouse v. Woodward*, 110 Cal. 638, 42 Pac. 1084; *New England Trust Co. v. Abbott*, 162 Mass. 148, 154, 38 N. E. 432, 27 L. R. A. 271 (stock not in market); *Northern Cent. Ry. Co. v. Walworth*, 193 Pa. St. 207, 74 Am. St. Rep. 683, 44 Atl. 253; *Manton v. Ray*, 18 R. I. 672, 49 Am. St. Rep. 811, 29 Atl. 998 (sufficient to allege that value of stock is not ascertainable, and that complainant cannot obtain it elsewhere). But see, *contra*, *Barton v. De Wolf*, 108 Ill. 195. Compare *Eckstein v. Downing*, 64 N. H. 248, 10 Am. St. Rep. 404, 9 Atl. 626 ("The stock . . . is not commonly offered for sale, and actual sales are very rare. The plaintiff may be unable to purchase an equal number of shares for the same price. But there is no evidence tending to show that he had any wish, or reason for wishing, to become the owner of the Abbott-Downing Company stock rather than any other stock of equal pecuniary value.") To the effect that a vendor may have specific performance in such a case, see *Bumgardner v. Leavitt*, 35 W. Va. 194, 13 S. E. 67, 12 L. R. A. 776. Relief will not be awarded, of course, if the contract is, for any reason, unlawful: *Foll's Appeal*, 91 Pa. St. 434, 36 Am. Rep. 671.

³⁹ *Taylor v. Merchants' Fire Ins. Co.*, 9 How. 390, 13 L. ed. 187; *Haden v. Farmers' & Mechanics' Fire Assn.*, 80 Va. 683. But relief will not be given when the plaintiff was not bound before the loss: *Insurance Co. of North America v. Schall*, 96 Md. 225, 53 Atl. 925, 61 L. R. A. 300.

after loss; and when sought after loss, the bill may be retained for the purpose of awarding the amount due.⁴⁰ The same principles apply to life insurance contracts.⁴¹ An agreement to execute a mortgage is of such character as to be capable of enforcement in equity;⁴² as is also a contract to indemnify a party,⁴³ or to exonerate his property from liability.⁴⁴ On the other hand, a contract to lend or to borrow money cannot be specifically enforced.⁴⁵ The remedy has been applied to a great

⁴⁰ *Tayloe v. Merchants' Fire Ins. Co.*, 9 How. 390, 13 L. ed. 187; *Hebert v. Mutual Life Ins. Co.*, 12 Fed. 807; *Union Cent. Life Ins. Co. v. Phillips*, 102 Fed. 19, 41 C. C. A. 263.

⁴¹ *Hebert v. Mutual Life Ins. Co.*, 12 Fed. 807; *Union Cent. Life Ins. Co. v. Phillips*, 102 Fed. 19, 41 C. C. A. 263. To the effect that the company may be compelled to issue a paid-up policy in accordance with the terms of its policy, see *Lindenthal v. Germania Life Ins. Co.*, 174 N. Y. 76, 68 N. E. 629. To the effect that an agreement by a beneficiary to surrender may be specifically enforced, see *Brett v. Warnick*, 44 Or. 511, 102 Am. St. Rep. 639, 75 Pac. 1061.

⁴² *Hermann v. Hodges*, L. R. 16 Eq. 18; *Hicks v. Turck*, 72 Mich. 311, 40 N. W. 339 ("the remedy at law, when resorted to, is liable to a very great variety of perplexities and embarrassments arising from the want of the note promised. . . . The note was liable to run five years, and complainants had the right to have the amount owing thereon during all the time it did run secured by the mortgage"); *Rothholz v. Schwarz*, 46 N. J. Eq. 477, 19 Am. St. Rep. 409, 19 Atl. 312. See, also, *Sporle v. Whayman*, 20 Beav. 607 (compelled to give memorandum of terms of deposit of title deeds).

⁴³ *Count Ranelagh v. Hayes*, 1 Vern. 189; *Reybold v. Herdman*, 2 Del. Ch. 34; *Champion v. Brown*, 6 Johns. Ch. 398, 10 Am. Dec. 343.

⁴⁴ *Reilly v. Roberts*, 34 N. J. Eq. 299.

⁴⁵ *Rogers v. Challis*, 27 Beav. 175 (agreement to borrow money not enforced, the court saying: "It is a simple money demand; the plaintiff says, I have sustained a pecuniary loss by my money remaining idle, and by my not getting so good an investment for it as you contracted to give me. This is a mere matter of calculation, and a jury would easily assess the amount of the damage which the plaintiff has sustained"); *Sichel v. Mosenthal*, 30 Beav. 371 (not of contract to lend money); *Conklin v. People's Bldg. & Loan Assn.*, 41 N. J. Eq. 20, 2 Atl. 615.

variety of special agreements, where the legal relief was inadequate; a few instances are given in the note.⁴⁶

§ 754. Awards.—“An award is treated as the continuance of the agreement to submit. If it directs acts to be done which, if stipulated for in a contract, would render such contract capable of enforcement, then the award itself may be specifically enforced.”⁴⁷ For example, awards directing the conveyance of land may be enforced in equity.⁴⁸ On the other hand, an award directing merely a payment of money will not be specifically enforced.⁴⁹ The question of the enforcement of

⁴⁶ *Very v. Levy*, 13 How. 345, 14 L. ed. 173 (agreement to accept goods in satisfaction of a bond and mortgage); *McMullen v. Vanzant*, 73 Ill. 190 (maker of promissory note obtained possession of it from the holder under a promise to return it or execute another of the same tenor and amount; having destroyed it, he was compelled to execute a new note); *Tarbell v. Tarbell*, 10 Allen, 278 (ante-nuptial contract by which a woman agreed to relinquish her distributive share of her husband's estate); *Sullings v. Sullings*, 9 Allen, 234 (same); *Tuttle v. Moore*, 16 Minn. 123 (agreement by holder of notes to deliver them up to maker to be canceled, notwithstanding they are overdue, and in hands of original payee); *Benwell v. Mayor etc. of Newark*, 55 N. J. Eq. 260, 36 Atl. 668 (holder of coupon bonds of a city, containing a provision which entitles him to have them converted, at his option, into registered bonds); *Kopplein v. Kopplein*, 8 Tex. Civ. App. 625, 28 S. W. 220 (agreement by payee of note to indorse payments thereon). For further instances, see 4 Pom. Eq. Jur., § 1402, note 6.

⁴⁷ Pom. Eq. Jur., § 1402. See, also, *Hall v. Hardy*, 3 P. Wms. 187, note; *Wood v. Griffith*, 1 Swanst. 43; *Bouck v. Wilber*, 4 Johns. Ch. 405 (specific performance although a small mistake in description); *Kirksey v. Fike*, 27 Ala. 383, 62 Am. Dec. 768 (by an award, one of two partners engaged in tanning business was to receive one-half of the skins in the yard, one-half of the leather, and the use of one-half of the vats). See, also, cases cited in following note.

⁴⁸ *Whitney v. Stone*, 23 Cal. 275; *Penniman v. Rodman*, 13 Met. 382; *Emans v. Emans*, 14 N. J. Eq. 114.

⁴⁹ *Hall v. Hardy*, 3 P. Wms. 187, note; *Story v. Norwich etc. Co.*, 24 Conn. 94; *Howe v. Nickerson*, 14 Allen, 400; *Memphis & C. R. R. Co. v. Scruggs*, 50 Miss. 284, 291. But if such award fixes

contracts for submission to arbitration rests upon a different footing.⁵⁰

§ 755. **No Relief When Decree Would be Nugatory—Partnership Agreements.**—"The court will not grant the remedy when by the terms of the contract itself the defendant would be entitled at any time to terminate the agreement and thus evade the decree."⁵¹ Accordingly, it is held that an agreement to enter into or carry on a partnership at will cannot be specifically enforced, for it might be terminated at any time.⁵² The doctrine is frequently stated more broadly to the effect that as a general rule the court will not decree specific performance of an agreement to perform and carry on a partnership.⁵³ Equity may, however, secure to a partner the interests in property to which by the partnership agreement he is entitled.⁵⁴

§ 756. **No Relief When Performance Depends on Consent of a Third Person.**—It was the rule in England in early

a lien upon land for the payment of money, it may be specifically enforced: *Memphis & C. R. R. Co. v. Scruggs*, 50 Miss. 284.

⁵⁰ See *post*, § 758.

⁵¹ Pom. Eq. Jur., § 1405, note. See *Farson v. Fogg*, 205 Ill. 326, 68 N. E. 755 (quoting Pom. Eq. Jur., § 1405).

⁵² *Hercy v. Birch*, 9 Ves. 357. See, also, *Somerby v. Buntin*, 118 Mass. 279, 19 Am. Rep. 459.

⁵³ *Scott v. Rayment*, L. R. 7 Eq. 112 ("it is an agreement to form a partnership, and if so, it is an agreement on which the plaintiff may maintain an action at law for damages, and that is an appropriate remedy"); *Hyer v. Richmond Traction Co.*, 168 U. S. 471, 18 Sup. Ct. 114, 42 L. ed. 547; *Meason v. Kaine*, 63 Pa. St. 335. It is clear that this broader statement cannot be supported on the theory stated at the beginning of the section, but rather depends upon the doctrine described in the following sections.

⁵⁴ *Somerby v. Buntin*, 118 Mass. 279, 19 Am. Rep. 459. In *Homfray v. Fothergill*, L. R. 1 Eq. 567, a provision in a partnership deed that the other partners should have the first opportunity to purchase the share of any partner desiring to sell was specifically enforced. See, also, *England v. Curling*, 8 Beav. 129.

days that a husband who contracted to sell property in which his wife had an interest might be ordered to procure the consent of his wife.⁵⁵ In accordance with a principle similar to that laid down in the preceding section, it is now held, both in England and in America, that such an order is improper.⁵⁶ Performance in such a case is impossible and therefore will not be decreed. The question of the right of the purchaser to have specific performance from the husband with an abatement of the price is discussed elsewhere.⁵⁷ It is also held that specific performance will not be decreed when its effect would be to order the defendant to take possession of property of a third party.⁵⁸

§ 757. Specific Performance Refused When Court cannot Render or Enforce a Decree.—"Although the contract is valid, and the defendant is able to do what he has undertaken to do, if, through the want of appropriate means and instrumentalities, the court is unable, while pursuing its ordinary modes of administering justice, either to render a decree or to enforce the decree when made, then the remedy will be refused. *Cases where*

⁵⁵ "It was the ancient practice of the court, however, to order the husband to procure his wife's consent, and to imprison him until he succeeded": Pom. Spec. Perf., § 295, note. See *Barrington v. Horn*, 5 Vin. Abr. 547, pl. 35, 2 Eq. Cas. Abr. 17, pl. 7; *Hall v. Hardy*, 3 P. Wms. 187; *Morris v. Stephenson*, 7 Ves. 474.

⁵⁶ *Emery v. Wase*, 8 Ves. 505, 514-517, 5 Ves. 846, 848; *Barbour v. Hickey*, 2 App. D. C. 207, 213. In this last case, the court, per Alvey, C. J., said: "The husband ought not to be put in a position by a court of equity to tempt him to coerce his wife to join him in a deed, nor ought the wife, especially where she is not a party to the contract, to be put to the alternative of either executing and acknowledging the deed, or of allowing her husband to be committed to prison for contempt of court, because of the non-compliance with the decree for specific performance."

⁵⁷ See *post*, chapter XLI.

⁵⁸ *Farson v. Fogg*, 205 Ill. 326, 68 N. E. 755.

the court cannot render a decree: The following species of contracts will not be thus enforced: Agreements concerning the manufacture and sale of secret medicines and other secret commodities, where the contract recognizes the secret as not to be disclosed.⁵⁹ Contracts for the sale or transfer of a good-will, separate from or unconnected with the business and premises of which it is an incident.⁶⁰ *Cases where the court cannot enforce its decree:* This class includes the following species of contracts, for which the equitable remedy is refused"; the more important of which, together with the exceptions to the rule of non-enforcement, are described in the following paragraphs: Agreements to submit to arbitration, and contracts for sale at a price to be fixed by valuers;⁶¹ contracts for personal services;⁶² contracts whose performance would be continuous, and would require protracted supervision and direction, including, especially, contracts for building and construction,⁶³ for working mines, for operating railroads,⁶⁴ and the like.

§ 758. **Arbitration Agreements, etc.**—An agreement to submit a matter to arbitration, or to sell at a price to be fixed by valuers, if the mode of fixing the price is an

⁵⁹ "Newbery v. James, 2 Mer. 446; Williams v. Williams, 3 Mer. 157"; 4 Pom. Eq. Jur., § 1405, note 10.

⁶⁰ "Bozon v. Farlow, 1 Mer. 459; Baxter v. Conolly, 1 Jacob & W. 576; Coslake v. Till, 1 Russ. 376. But where the good-will is sold and transferred, *together with* the business and premises, the agreement may be directly enforced, or negatively enforced by an injunction: Darbey v. Whitaker, 4 Drew, 134, 139, 140; Chissum v. Dewes, 5 Russ. 29; Whittaker v. Howe, 3 Beav. 383"; 4 Pom. Eq. Jur., § 1405, note 10. See, also, *ante*, volume I, chapter on Injunction Against Breach of Contract.

⁶¹ See *post*, § 758.

⁶² See *post*, § 759.

⁶³ See *post*, § 760.

⁶⁴ See *post*, § 761.

essential part of the contract, will not be specifically enforced, since it is beyond the power of the court to compel arbitrators to agree; nor will the court itself fix the price, since that would be to make a new agreement for the parties.⁶⁵

§ 759. **Contracts for Personal Services.**—It is a familiar rule that contracts for personal services, where the full performance rests upon the personal will of the contracting party, will not be specifically enforced against him.⁶⁶ It is also generally true that they will not be enforced where the plaintiff is the one who has contracted to render the services, and there has been no full performance on his part, since mutuality in the equitable remedy is then lacking.⁶⁷ The indirect en-

⁶⁵ Pom. Spec. Perf., §§ 291, 309, 149-151; *Milnes v. Gery*, 14 Ves. 100; *Agar v. Macklew*, 2 Sim. & St. 418; *Vickers v. Vickers*, L. R. 4 Eq. 529; *Hug v. Van Burkleo*, 58 Mo. 202; *Greason v. Keteltas*, 17 N. Y. 491. For instances where specific performance was decreed, the court fixing the value, see *Grosvenor v. Flint*, 20 R. I. 21, 37 Atl. 304 (the arbitration clause held to be a subsidiary part of the agreement, and the value therefore fixed by reference to the master); *Town of Bristol v. Bristol & W. Waterworks*, 19 R. I. 413, 34 Atl. 359, 32 L. R. A. 740 (same); *Springer v. Borden*, 154 Ill. 668, 39 N. E. 603 (rent under a lease to be fixed by arbitrators; lease provided that if award should fail to be made, value should be fixed by the courts); *Cooke v. Miller* (R. I.), 54 Atl. 927 (arbitrators fail to agree; specific performance because parties cannot be placed *in statu quo*).

As to enforcing awards, see *ante*, § 754.

⁶⁶ *Pickering v. Bishop of Ely*, 2 Younge & C. Ch. 249; *Metropolitan Exhibition Co. v. Ewing*, 42 Fed. 198, 7 L. R. A. 381; *Rogers Mfg. Co. v. Rogers*, 58 Conn. 356, 18 Am. St. Rep. 278, 20 Atl. 467, 7 L. R. A. 779; *Hamblin v. Dinneford*, 2 Edw. Ch. (N. Y.) 529; *Campbell v. Rust*, 85 Va. 653, 8 S. E. 664 (agreement to mine and deliver ore); 4 Pom. Eq. Jur., § 1343. The opinion of Chancellor Walworth, in *De Rivafloli v. Corsetti*, 4 Paige, 270, 25 Am. Dec. 532, is a *locus classicus* of judicial humor.

⁶⁷ *Johnson v. Shrewsbury etc. Co.*, 3 De Gex, M. & G. 914; *Wakeham v. Barker*, 82 Cal. 46, 22 Pac. 1131; *Moore v. Tuohy*, 142 Cal.

forcement of contracts for services of a unique and extraordinary character, by enjoining the breach of an express or implied stipulation not to do acts inconsistent with the rendering of the services, is a subject that has been treated elsewhere.⁶⁸

§ 760. **Contracts for Building or Construction.**—The general rule has long been settled, after a period of conflict and uncertainty in the early cases,⁶⁹ that contracts for building and construction, and contracts to make repairs, will not be enforced *in specie*,⁷⁰ on account of the

342, 75 Pac. 896; *Alworth v. Seymour*, 42 Minn. 526, 44 N. W. 1030; and *post*, §§ 769-776. See, however, the extraordinary decision in *Jones v. Williams*, 139 Mo. 1, 36, 61 Am. St. Rep. 436, 454, 39 S. W. 486, 40 S. W. 353, holding that a contract by which plaintiff was employed for a number of years as editor of a newspaper, with sole control, is not a contract for "personal services" within the meaning of the rule; cf. dissenting opinion of Sherwood, J., and cases there cited.

68 See volume I, chapter on Injunction Against Breach of Contracts.

69 In *Jones v. Parker*, 163 Mass. 564, 47 Am. St. Rep. 485, 40 N. E. 1044, Holmes, J., makes the sweeping assertion that courts of equity "have enforced such contracts from the earliest days to the present time"; but it has been pointed out that the cases dating from the fifteenth century by which the learned judge supports his assertion are probably not cases of specific performance at all: 1 Ames, Cas. Eq. Jur., 68, note 4. In the eighteenth century, however, such contracts were enforced rather frequently. Lord Hardwicke, in *City of London v. Nash*, [1747] 3 Atk. 512, made the distinction that a covenant to build could be enforced, "for to build is one entire single thing"; but not a covenant to repair. By the end of that century, however, this distinction was abandoned: *Lucas v. Comerford*, [1790] 1 Ves. Jr. 235, 3 Bro. C. C. 166.

70 The authorities are fully reviewed in the opinion of Mr. Justice Miller in *Ross v. Union Pac. Ry. Co.*, 1 Woolw. 26, Fed. Cas. No. 12,080 (a railroad construction contract). See, also, *Texas & P. Ry. Co. v. Marshall*, 136 U. S. 393, 407, 10 Sup. Ct. 846, 34 L. ed. 385; *Strong v. Richmond, P. & C. R. Co.*, 111 Fed. 511, 517 (railroad construction); *Beck v. Allison*, 56 N. Y. 366, 15 Am. Rep. 430 (lessor's covenant to repair).

inconvenience of enforcing a decree by the process of attachment for contempt, when numerous questions must usually arise under the decree in such a case as to whether there has been substantial performance, whether defective performance may be excused, what compensation should be made for the deficiency, and the like. Moreover, if the building is to be done on the plaintiff's land, the remedy at law is usually adequate, since he may do the work himself and sue at law for the cost. Several exceptions have been made to the rule by the English courts.⁷¹ One of these exceptions has become firmly established. "Where there is a definite contract, by which a person, who has acquired land in consideration thereof, has agreed to erect on the land so acquired a building [or other structure] of which the particulars are clearly specified, and the erection of which is of an importance to the other party which cannot adequately be measured by pecuniary damages specific performance ought to be ordered."⁷²

71 See 4 Pom. Eq. Jur., § 1402, note 6. "I must confess that I cannot altogether understand the principle upon which courts of equity have acted in sometimes granting orders for specific performance in these cases and sometimes not. . . . In early times they seem to have granted decrees for specific performance in such cases. [See note 69, *supra*] Then came a period in which they would not grant such decrees on the ground that the courts could not undertake to supervise the performance of the contract. Later on they seem to have attached less importance to this consideration, and returned to some extent to the more ancient practice, holding that they could order specific performance in certain cases in which the works were specified by the contract in a sufficiently definite manner": Collins, L. J., in *Mayor etc. of Wolverhampton v. Emmons*, [1901] 1 K. B. 515.

72 A. L. Smith, M. R., in *Mayor etc. of Wolverhampton v. Emmons*, [1901] 1 K. B. 515; *Ryan v. Mutual Tontine etc. Assn.*, [1893] 1 Ch. 116, 128. See, also, *Storer v. Great Western Ry. Co.*, 2 Younge & C. Ch. 48 (a leading case; contract by railway company to build archway under track which divided plaintiff's farm); *Wilson v.*

§ 761. Other Contracts Requiring Continuous Acts—Railroad Operating Agreements.—The general doctrine that equity will not affirmatively decree specific performance

Furness Ry. Co., L. R. 9 Eq. 28 (agreement to build road and wharf on land conveyed; per James, V. C. "It would be monstrous if the company, having got the whole benefit of the agreement, could turn round and say, 'This is a sort of thing which the court finds a difficulty in doing, and will not do.' Rather than allow such a gross piece of dishonesty to go unredressed the court would struggle with any amount of difficulties in order to perform the agreement"); *Lytton v. Great Northern Ry. Co.*, 2 Kay & J. 394 (agreement to construct railway siding on land conveyed, enforced); *Sanderson v. Cockermouth Ry. Co.*, 11 Beav. 497 (agreement to "make such roads, ways, and slips for cattle as might be necessary," enforced, though admittedly difficult). The American cases directly in point are not so numerous, but clearly support the foregoing exception; see, e. g., *Ross v. Purse*, 17 Colo. 24, 28 Pac. 473 (agreement to dig a well); *Post v. West Shore & B. Ry. Co.*, 123 N. Y. 580, 26 N. E. 7 (agreement by railway to construct crossing); *Lawrence v. Saratoga Lake Ry. Co.*, 36 Hun, 467 (an instructive opinion; agreement by railway to build bridges for overhead crossings, and a "neat and tasteful station building," enforced; citing Pom. Eq. Jur., § 1402, and note). See, also, *South & North Ala. R. Co. v. Highland Ave. & B. R. Co.*, 98 Ala. 400, 39 Am. St. Rep. 74, 13 South. 682 (agreement by defendant railroad to renew crossing over its tracks, or, if it failed to do so on notice, to permit plaintiff railroad to do the work on defendant's land, enforced).

But see *McCarter v. Armstrong*, 32 S. C. 203, 10 S. E. 953, 8 L. R. A. 625 (agreement to construct and keep open a ditch on defendant's land; relief refused, because damages adequate, and "work was to be kept up forever"; citing Pom. Eq. Jur., §§ 1400, 1402, 1405).

The complainant's equity may readily be outweighed by considerations of public policy, as in *Kendall v. Frey*, 74 Wis. 26, 17 Am. St. Rep. 118, 42 N. W. 466 (land conveyed to city on consideration that a city hall be erected thereon, which would benefit plaintiff's adjoining property; specific performance refused, since discretion of the city common council as to location of a public building should not be interfered with); *Gove v. City of Biddeford*, 85 Me. 393, 27 Atl. 264 (contract by city to build a sewer not enforced, for same reason).

The decision in *Jones v. Parker*, 163 Mass. 564, 47 Am. St. Rep. 485, 40 N. E. 1044 (Holmes, J.), that a covenant by a lessor "reasonably to heat and light the demised premises" from the time

of a contract requiring continuous acts, especially if those acts involve skill, judgment, and technical knowledge⁷³ has been broken into, of late years, by an important exception in favor of certain contracts relating

when possession was taken by the lessee, should be specifically enforced by a decree ordering the installation of the necessary apparatus, is clearly not within the above exception, and appears to be unsupported by modern authority; see *contra, e. g.*, *Keith v. National Tel. Co.*, [1894] 2 Ch. 147, *infra*, in next note.

⁷³ For further instances of specific performance refused because the execution of the decree would require supervision of acts, on part of plaintiff or defendant, extending over a considerable period of time, see *Flint v. Brandon*, 8 Ves. 159 (1803; working a gravel pit); *Blackett v. Bates*, L. R. 1 Ch. App. 117 (1865; agreement relating to repair and use of railway); *Powell Duffryn Coal Co. v. Taff Vale Ry. Co.*, L. R. 9 Ch. App. 331 (1874; agreement as to operating railway); *Ryan v. Mutual Tontine Westminster Chambers Assn.*, [1893] 1 Ch. 116 (by landlord, to appoint a porter who should perform various services); *Keith, Prowse & Co. v. Nat. Telephone Co.*, [1894] 2 Ch. 147 (to maintain telephone wires and apparatus for plaintiff; but injunction against cutting the wires); *Rutland Marble Co. v. Ripley*, 10 Wall. 339, 358, 19 L. ed. 955 (working a quarry); *Texas & P. R. Co. v. Marshall*, 136 U. S. 406, 10 Sup. Ct. 846, 34 L. ed. 390 (agreement by railroad, in consideration of large gift of land and money by plaintiff town, to establish its offices and shops there); *Electric L. Co. v. Mobile & S. H. Ry. Co.*, 109 Ala. 190, 55 Am. St. Rep. 927, 19 South. 721 (agreement by plaintiff to furnish electric power, by defendant to operate cars); *Stanton v. Singleton*, 126 Cal. 657, 59 Pac. 146, 47 L. R. A. 334 (plaintiff's agreement to develop and operate mines); *Fargo v. New York & N. E. R. Co.*, 3 Misc. Rep. 205, 23 N. Y. Supp. 360 (contract by railroad to supply facilities, cars, etc., to express company). In *Standard Fashion Co. v. Siegel-Cooper Co.*, 157 N. Y. 60, 68 Am. St. Rep. 749, 51 N. E. 408, 43 L. R. A. 854, it was held that the objection to specific performance on this ground cannot be taken by demurrer. See 68 Am. St. Rep. 753-762, for an excellent note reviewing the cases on this subject.

The objections to the exercise of the jurisdiction are forcibly stated in a leading case: "Even if the contract was sufficiently specific, so that the party, when ordered to operate the railroad, would know the manner and mode in which the order was to be obeyed, still the question of obedience to the order must necessarily be left open. And the question of obedience to such an order might

to the operation of railroads. In analogy to the cases mentioned in the last section, where the company, in consideration of the conveyance to it of land, was compelled to comply with its agreement to erect certain structures for the grantor's benefit, its reasonable agreement to maintain a station on the land conveyed for the plaintiff's convenience, and to stop trains thereat, will be enforced,⁷⁴ if that is consistent with the company's larger duty to operate its road so as to promote the public convenience.⁷⁵ But the exception has taken a much wider scope than this. Trackage and operating contracts between railroads, of the utmost complexity, have

come up for solution, not once, as in the case of the archway, the erection of which was ordered in *Storer v. Great Western Railway* [*supra*, note 72], but in instances innumerable, and for an indefinite time. Instead of the final order being the end of litigation, it would be its fruitful and continuous source, and that, too, of litigation not in the regular course of judicial proceedings, but irregularly, on a summary application. And such application to be made by either party, one when he conceived there had not been a faithful compliance with the order, and the other when exemption from some provision might be claimed, on the ground of inability or unforeseen events': *Port Clinton R. R. Co. v. Cleveland & T. R. Co.*, 13 Ohio St. 544, 556. The whole opinion in this case is one of the most instructive on the general subject.

While the passage above quoted states as forcibly as possible the reason usually given in support of the rule,—viz., the inconvenience to the court,—it seems to the author that there is some ground for conjecture that the rule really rests upon a deeper reason of public policy; a feeling, perhaps not expressed in the decisions, that the daily and hourly ordering of the affairs of an individual or a group of individuals, for an indefinite term of years, in obedience to the terms of a chancery decree, and with its personal sanction for disobedience, is, in effect, such an impairment of personal freedom as is hostile to the whole spirit of English and American institutions.

⁷⁴ *Hood v. North Eastern Ry. Co.*, L. R. 8 Eq. 666, 5 Ch. 525 [1869]; *Lawrence v. Saratoga Lake Ry. Co.*, 36 Hun, 467; but see *Blanchard v. Detroit etc. Co.*, 31 Mich. 43, 18 Am. Rep. 142 (*dictum*).

⁷⁵ *Conger v. New York, W. L. & B. R. R. Co.*, 120 N. Y. 29, 23 N. E. 983.

recently been the subject of decrees of specific performance, although in making their decrees the courts have conceded that they would be called upon from time to time to alter and adapt to changing circumstances their regulations for carrying the decrees into effect, during a long period of years.⁷⁶ In the first of this series of

⁷⁶ *Joy v. St. Louis*, 138 U. S. 1, 11 Sup. Ct. 243, 34 L. ed. 843 (1891; Blatchford, J.); *Union Pac. Ry. Co. v. Chicago, R. I. & P. Ry. Co.*, 163 U. S. 564, 16 Sup. Ct. 1173, 41 L. ed. 265 (1896; Fuller, C. J.), affirming *Union Pac. Ry. Co. v. Chicago, R. I. & P. Ry. Co.*, 51 Fed. 309, 2 C. C. A. 174, 10 U. S. App. 98 (1892; Sanborn, Cir. J.), and *Chicago, R. I. & P. Ry. Co. v. Union Pac. Ry. Co.*, 47 Fed. 15 (1891; Brewer, J.); *Prospect Park & C. I. R. R. Co. v. Coney Island & B. R. R. Co.* (1894), 144 N. Y. 152, 39 N. E. 17, 26 L. R. A. 610; *Schmidt v. Louisville & N. R. Co.*, 101 Ky. 441, 41 S. W. 1015, 38 L. R. A. 809. See, also, *Wolverhampton & W. R. Co. v. London & N. W. R. Co.*, L. R. 16 Eq. Cas. 433 (agreement that defendant company should work the plaintiff's line, and during the continuance of the agreement develop and accommodate the local and through trade thereof and carry over it certain specific trade. But this case seems analogous, in principle, to those cited in the last two notes, since "the question is, whether the defendants, being in possession, they are not at liberty to depart from the terms on which it was stipulated that they should have that possession").

In *Joy v. St. Louis*, *supra*, the A company acquired, under contract, the right to run its trains over the line of the B company, through a large public park adjacent to the city of St. Louis, with the right to numerous terminal facilities. The contract was unlimited in time, and contained complicated provisions regulating the running of trains, and prescribing the duties of superintendents, train masters, and other officers. A special reason for decreeing specific performance was found in the fact that railroads entering St. Louis from the west must cross this park and that it was desirable, in order to maintain its usefulness as a park, that they should all use a single set of tracks. In *Union Pac. Ry. Co. v. Chicago, R. I. & P. Co.*, the U. Co. agreed with the C. Co. to grant the latter the joint use of the former's bridge and tracks between Omaha and Council Bluffs, for the term of nine hundred and ninety-nine years, to make regulations for the movement of trains of both companies over these tracks with equal regard to the rights of both parties, under the direction of the superintendent of the U. P. Co. There was no special reason of public convenience in the case, as in *Joy v. St. Louis*; nor was there in *Prospect Park & C. I. R. R. Co.*

Equitable Remedies, Vol. II—81

cases an important element affecting the decision was a direct public benefit that resulted from not leaving the complainant to its remedy of damages; but no such element appears to have been present in the cases that followed this precedent. Whether this remarkable series of decisions is to be taken as a virtual abandonment, on the part of the influential courts which rendered them, of the rule against specific enforcement of continuing contracts, or merely as an arbitrary exception in favor of operating agreements among railroads, is a question on which, unfortunately, these decisions themselves shed little light.⁷⁷

v. C. I. & B. R. R. Co., *supra* (defendants agreed to operate a line of horsecars in connection with plaintiff's line so as to make a through route, but when it afterwards became an active competitor of plaintiff, discontinued such connection). *Schmidt v. Louisville & N. R. Co.* was an agreement by the lessee of a railroad to operate the road for a term of thirty years. *Contra* to these cases, see the instructive opinion in *Port Clinton R. R. Co. v. Cleveland & T. R. R. Co.*, 13 Ohio St. 544, an extract from which is given *supra*, note 73.

77 Several of the opinions meet the objection to the exercise of the jurisdiction in these cases by pointing to the experience of the courts of equity in railroad management through the instrumentality of receivers; one of them (47 Fed. 26, per Brewer, J.) even indulges in frank expressions of admiration for such management; and in the Kentucky case the lower court is actually directed to place the road in the hands of a receiver "if that is deemed best" for the purpose of enforcing its orders. It hardly needs to be pointed out that a receiver has hitherto been supposed to be a provisional and temporary remedy, not one extending over a period of thirty or of nine hundred and ninety-nine years.

CHAPTER XXXVIII.

ELEMENTS AND INCIDENTS OF THE CONTRACT ESSENTIAL TO SPECIFIC PERFORMANCE.

ANALYSIS.

- § 762. The jurisdiction discretionary.
- § 763. Contract must be upon a valuable consideration.
- §§ 764-768. Contract must be complete, certain, and definite.
- § 765. Incompleteness of proof.
- § 766. How far parol evidence can be used to make certain or definite.
- § 767. Incompleteness and uncertainty may relate to the parties, price, subject-matter, conditions, etc.
- § 768. Uncertainty and indefiniteness alone as a defense.
- §§ 769-776. The doctrine of mutuality.
- § 769. The rule restated.
- § 770. Contracts whose terms are not mutual; (a) Where plaintiff could avoid performance.
- § 771. (b) Where plaintiff's non-enforceable promise has been performed.
- § 772. (c) Where plaintiff's inability is cured before decree.
- § 773. Unilateral contracts—Options.
- § 774. Contracts terminable at the will of one party.
- § 775. Indirect enforcement by enjoining the breach of defendant's negative covenant.
- § 776. Fraud or other personal bar of the defendant.
- §§ 777-783. Mistake as a defense to specific performance.
- § 777. Rescission and reformation.
- § 778. What mistakes are a defense to specific performance.
- § 779. Misdescription and ambiguity.
- § 780. Mistake induced, or contributed to, by the plaintiff.
- § 781. Mistake known to plaintiff.
- § 782. Mistake due to defendant's negligence.
- § 783. Mistake due solely to defendant.
- § 784. Concealment or non-disclosure of material facts as a defense.
- §§ 785-800. Unfairness and hardship as a defense.
- § 786. Unfairness and advantage.
- § 787. Inequality—(a) In making the contract—(b) In the operation of the contract.

- § 788. Intoxication.
- § 789. Improvidence of the undertaking.
- § 790. Inadequacy of consideration with other grounds.
- § 791. Unintended harsh consequence.
- § 792. Inadvertent covenant or act.
- § 793. Greatly oppressive consequence.
- § 794. Injury to third persons.
- § 795. Inconvenience to the public.
- § 796. Performance no benefit to plaintiff.
- § 797. Subsequent events which should have been contemplated,
no defense.
- § 798. Subsequent events, not in possible contemplation, often
a defense.
- § 799. Direct act of either party.
- § 800. Forfeiture.
- §§ 801-804. A purchaser need not accept a doubtful or unmarketable
title.
- § 802. The standard for determining a "doubtful" title.
- § 803. Where the doubt arises from an unsettled question of
law.
- § 804. Where the doubt arises from an extrinsic fact or the
construction of a document.

§ 762. The Jurisdiction Discretionary.—“The object of the foregoing paragraphs is to formulate the general rules which determine the classes of contracts in which the equitable jurisdiction *may* be exercised. But even when a particular contract belongs to such a class, the right to its specific performance is not absolute, like the right to recover a legal judgment. The granting the equitable remedy is, in the language ordinarily used, a matter of discretion, not of an arbitrary, capricious discretion, but of a sound judicial discretion, controlled by established principles of equity, and exercised upon a consideration of all the circumstances of each particular case. Where, however, the contract is in writing, is certain in its terms, is for a valuable consideration, is fair and just in all its provisions, and is capable of being enforced without hardship to either party, it is as much a matter of course for a court of

equity to decree its specific performance as for a court of law to award a judgment of damages for its breach. This is the ordinary language of judges and text-writers.¹ The term 'discretionary' as thus used is, in my opinion, misleading and inaccurate. The remedy of specific performance is governed by the same general rules which control the administration of all other equitable remedies. The right to it depends upon elements, conditions, and incidents, which equity regards as essential to the administration of all its peculiar modes of relief. When all these elements, conditions, and incidents exist, the remedial right is perfect in equity.² So far as these essential elements and conditions do not relate to the existence of contracts binding in equity, they are nothing but expressions and applications of the fundamental principles, He who seeks equity must do equity, and He who comes into equity must come with clean hands."³

¹ 4 Pom. Eq. Jur., § 1404, and cases cited in the note.

² "These elements, conditions, and incidents, as collected from the cases, are the following: The contract must be concluded, certain, unambiguous [*post*, §§ 764-768], mutual [see *post*, §§ 769-776], and upon a valuable consideration [see *post*, § 763]; it must be perfectly fair in all its parts [see *post*, §§ 785-800]; free from any misrepresentation [see 2 Pom. Eq. Jur., §§ 889, 899] or misapprehension [see *post*, §§ 777-783], fraud or mistake [see *post*, §§ 777-784], imposition or surprise [see *post*, §§ 781, 784, etc.]; not an unconscionable or hard bargain; and its performance not oppressive upon the defendant [see *post*, §§ 785-800]; and finally: it must be capable of specific execution through a decree of the court [see *ante*, §§ 755-761]." 4 Pom. Eq. Jur., § 1404, note 2. As to the requirement that the defendant must have the capacity and ability to perform the contract by obeying the decree of the court, and the rules as to compensation to plaintiff for his partial incapacity, or (in some cases) damages awarded in equity where his incapacity is total, see *post*, chapter XLI.

³ 4 Pom. Eq. Jur., § 1404. For particular instances of the application of these maxims, see 1 Pom. Eq. Jur., §§ 392, 393, 400, 459.

§ 763. **Contract Must be upon a Valuable Consideration.**—Equity will not decree specific performance of a contract except upon a sufficient consideration for the promise, such as would satisfy a court of law in dealing with a contract.⁴ It must be a *valuable*, and not merely a *good*, consideration, as blood and affection,⁵ and there must be a consideration in fact, and not merely one stated.⁶ Equity will never decree specific performance of a voluntary undertaking or promise.⁷ Equity goes further than the court of law, and looks behind the seal of a specialty, and will not give its aid to enforcing the sealed instrument if there is no consideration found.⁸

§ 764. **Contract Must be Complete, Certain, and Definite.**—A contract that is incomplete, uncertain, or indefinite in its material terms will not be specifically enforced in equity. Following the general principles of equity, there is required a greater degree of certainty and definiteness for specific performance than to obtain damages at law. For specific performance is required that

⁴ *Gustin v. Union School Dist.*, 94 Mich. 502, 34 Am. St. Rep. 362, 54 N. W. 156; *Maryland Clay Co. v. Simpers*, 96 Md. 1, 53 Atl. 424; *Lamprey v. Lamprey*, 29 Minn. 151, 155, 12 N. W. 514; *Stubbings v. Durham*, 210 Ill. 542, 71 N. E. 586; *Boles v. Caudle*, 133 N. C. 528, 45 S. E. 835.

⁵ *Camden v. Dewing*, 47 W. Va. 310, 81 Am. St. Rep. 797, 34 S. E. 911; *Jeffreys v. Jeffreys*, *Craig & P.* 139; *Barret v. Geisinger*, 179 Ill. 240, 53 N. E. 576, 578.

⁶ *Lamprey v. Lamprey*, 29 Minn. 156, 12 N. W. 514.

⁷ *Jeffreys v. Jeffreys*, *Craig & P.* 139.

⁸ *Lamprey v. Lamprey*, *supra*, p. 155. "Equity always requires an actual consideration in the case of executory contracts, and permits evidence as to the want of it without regard to the seal." See this subject treated more at length in 1 Pom. Eq. Jur., § 370; 3 Pom. Eq. Jur., § 1293.

As to *inadequacy* of the consideration as a defense to specific performance, see *post*, §§ 789, 790, and especially, 2 Pom. Eq. Jur., §§ 925-928, where the doctrine is fully stated and explained.

degree of certainty and definiteness which leaves in the mind of the chancellor or court no reasonable doubt as to what the parties intended, and no reasonable doubt of the specific thing equity is to compel done.⁹ "The element of *completeness* denotes that the contract embraces all the material terms; that of *certainty* denotes that each one of these terms is expressed in a sufficiently exact and definite manner. An incomplete contract, therefore, is one from which one or more material terms have been entirely omitted. An uncertain contract is one which may indeed embrace all the material terms, but one or more of them is expressed in so inexact, indefinite, or obscure language, that the intent of the parties cannot be sufficiently ascertained to enable the court to carry it into effect."¹⁰

§ 765. *Incompleteness of Proof.*—Wherever the contract rests in whole or in part on parol evidence, the elements of incompleteness, uncertainty, and indefiniteness may exist when the proof is insufficient, conflicting, and leaving room for doubt as to what the precise terms were, for the plaintiff is bound to establish clearly and satisfactorily the existence of the contract and its terms.¹¹

⁹ *McKee v. Higbee*, 180 Mo. 263, 79 S. W. 407, where to obtain specific performance, the court holds the contract must be "clear, definite and unequivocal," such as "to leave no room for any reasonable doubt."

¹⁰ *Pom. Spec. Perf.*, § 145.

¹¹ *Deeds v. Stephens* (Idaho), 79 Pac. 77; *Wolfinger v. McFarland* (N. J.), 54 Atl. 862; *Kelly v. Short* (Tex. Civ. App.), 75 S. W. 877; *Dreiske v. Eisendrath Co.*, 214 Ill. 199, 73 N. E. 379; *McKee v. Higbee*, 180 Mo. 263, 79 S. W. 407; *House v. Clemens*, 16 Daly, 3, 9 N. Y. Supp. 484 (contract found sufficiently definite and enforced by injunction); *Cable v. Jones*, 179 Mo. 606, 78 S. W. 780 (sufficient certainty found and specific performance given).

§ 766. **How Far Parol Evidence can be Used to Make Certain or Definite.**—However, it is not required that the written contract itself should furnish the sole evidence of such certainty and definiteness, where it is complete in its material terms, and there is sufficient certainty and definiteness for the court to supply either by proper reference to other documents, or by properly admissible parol evidence as to extrinsic facts, the necessary degree of exactness.¹² But parol evidence can never be given to supply an omitted term or make definite and certain that which the parties left indefinite and uncertain; in a word, parol evidence cannot show the intent of the parties if it cannot be found in the contract.¹³ Parol evidence can only be used to “fit the description to the land.”¹⁴

§ 767. **Incompleteness and Uncertainty may Relate to the Parties, Price, Subject-matter, Conditions, etc.**—The material terms, or the existence of the contract, may be lacking in reference to: (1) the parties contracting, or (2) the price or some definite means of ascertaining

12 *Peay v. Seigler*, 48 S. C. 496, 59 Am. St. Rep. 731, 26 S. E. 885 (parol evidence of extrinsic circumstances to show the property referred to by the written instrument); *Fowler v. Fowler*, 204 Ill. 82, 68 N. E. 414 (where the description became certain by reference to the probate record and attorney's letter referred to); *Ross v. Purse*, 17 Colo. 24, 28 Pac. 473 (contract for a well to be dug on lot 10. Could be made certain and definite by reference to town plats).

13 The rule has been well stated in *Fry v. Platt*, 32 Kan. 62, 3 Pac. 781, as follows: That in order to satisfy the requirements both of the statute of frauds and of certainty in the contract, “it is required that the whole contract with all its essentials be in writing, that its terms be definite and certain or that they can be made definite and certain in reference to other instruments in writing, or by reference to extrinsic and existing facts which may be shown to the court.”

14 *Halsell v. Renfrow* (Okla.), 78 Pac. 118.

it,¹⁵ (3) the subject-matter, (4) conditions, etc. Thus, (1) the parties must be capable of being determined from the written contract;¹⁶ (2) there must be a price given, or some means of ascertaining it within the power of equity to enforce;¹⁷ (3) the land or other subject-matter, must be described with sufficient definiteness to identify it. Equity cannot give specific performance unless the thing or land is specifically determined.¹⁸ Thus, a contract to convey "your lot," where the vendor owned three lots, is not enforceable, and parol evidence cannot be brought in to show the intent of the parties as to one particular lot.¹⁹ But, to give the classic instance, a contract to convey "my mill" where vendor owned but one mill, is good. Contract to convey lot 56,

15 Fry v. Platt, 32 Kan. 62, 3 Pac. 781.

16 Halsell v. Renfrow (Okla.), 78 Pac. 118.

17 Reynolds v. Kirk, 105 Ala. 446, 17 South. 95 (where a promissory note contained price of the land, date of payment, and other terms, it was sufficient to satisfy the statute of frauds); Fry v. Platt, 32 Kan. 62, 3 Pac. 781.

18 Higginbotham v. Cooper, 116 Ga. 741, 42 S. E. 1000 (contract called for "lot on Clark St. bought at tax sale." As plaintiff did not show there were no other lots on Clark street, bought at tax sale and owned by vendor, he could not have specific performance); Kirkpatrick v. Pettis (Iowa), 103 N. W. 956 (location of land not shown by section, street, or other definite description); Powers v. Rude (Okla.), 79 Pac. 89; Ferguson v. Blackwell, 8 Okla. 489, 495, 58 Pac. 647; Meyer v. Quiggle, 140 Cal. 495, 74 Pac. 40 (to pay for services in cash or land at option of plaintiff); Knight v. Alexander, 42 Or. 521, 71 Pac. 657 (to convey one hundred acres of "west end of my land"; indefinite, as not clear whether contract applied to land about to be acquired or not); Rock Island & Pac. Ry. Co. v. Dimick, 144 Ill. 628, 32 N. E. 291, 19 L. R. A. 105 (here the contract was to keep open two passageways under the railroad track, but did not state their size, location, or nature. Extrinsic evidence showed two former ways in existence. Contract held definite, and enforced); Ross v. Purse, 17 Colo. 24, 28 Pac. 473 (contract for a well enforced, though no term as to depth of well or kind of timbering. Inference that ordinary well intended).

19 Farthing v. Rochelle, 131 N. C. 563, 43 S. E. 1.

block 12, is bad for uncertainty, as there is no governmental division of blocks;²⁰ and one to convey a lot where vendor lived, the size to be determined later, is bad for indefiniteness.²¹ Not only must the specific thing be identified, it must be defined. A contract to take a certain tract of land or any other piece of defendant's land, is too indefinite.²² But a contract which gave a right to select fifty acres out of a larger tract has been enforced.²³ (4) Conditions, etc. The contract must be complete, definite and certain as to whatever conditions are annexed, terms of credit where given, place of performance, time of performance unless a reasonable time is inferred, and other terms that are made by the contract.²⁴ Thus, a contract to furnish a city with light, allowing the substitution of electric light for gas, but leaving the number and price of the electric lights for later agreement is unenforceable for incompleteness in a material term.²⁵ Similarly a contract to take milk from plaintiff is unenforceable where neither price, amount, time nor place of delivery was named by the contract.²⁶

§ 768. Uncertainty and Indefiniteness Alone as a Defense. Many contracts are unenforceable for uncertainty and indefiniteness alone, rather than on the ground of in-

²⁰ *Glos v. Wilson*, 198 Ill. 44, 64 N. E. 734.

²¹ *Agnew v. Southern Ave. Land Co.*, 204 Pa. St. 752, 53 Atl. 752.

²² *Ensminger v. Peterson*, 53 W. Va. 324, 44 S. E. 218.

²³ *McCarty v. May* (Tex. Civ. App.), 74 S. W. 804.

²⁴ *Fry v. Platt*, 32 Kan. 62, 3 Pac. 781; *Walpole v. Orford*, 3 Ves. Jr. 402; *Meyer Land Co. v. Pecor* (S. D.), 101 N. W. 39; *Moore v. Galupo*, 65 N. J. Eq. 194, 55 Atl. 628; *Brown v. Swarthout*, 134 Mich. 585, 96 N. W. 951; *Burke v. Mead*, 159 Ind. 252, 64 N. E. 880; *Welsh v. Williams* (Miss.), 37 South. 561.

²⁵ *Gas Light & Coke Co. v. City of Albany*, 139 Ind. 660, 39 N. E. 462.

²⁶ *Giles v. Dunbar*, 181 Mass. 22, 62 N. E. 985.

completeness; or for these three elements combined.²⁷ Thus, where a daughter let her father have a sum of money to purchase a home in exchange for his promise to leave it to her by will, and five years later the father bought a home, she was refused specific performance because of the indefiniteness.²⁸ Where the agreement was for certain lots in either section 8 or 9, there was no incompleteness of the contract, but there was such uncertainty that equity could not enforce the contract without making a new contract itself, which it always refuses to do.²⁹

§ 769. The Doctrine of Mutuality—The Rule Restated.—The frequent statement of the rule of mutuality,—“that the contract to be specifically enforced must as a general rule, be mutual,—that is to say, such, that it might, at the time it was entered into, have been enforced by either of the parties against the other,”³⁰ is open to so many exceptions that it is of little value as a rule.³¹

27 *Russel v. Agar*, 121 Cal. 396, 66 Am. St. Rep. 35, 53 Pac. 926.

28 *Leary v. Corvin* (N. Y.), 73 N. E. 984.

29 *Rampe v. Buehler*, 203 Ill. 384, 67 N. E. 796. For a collection of older authorities on the requisites of completeness and certainty, see 4 Pom. Eq. Jur., § 1405, note 2.

30 Fry, *Spec. Perf.* (3d ed.), 215.

31 Pom. Eq. Jur., § 1405, note 3. In a recent article, which restates the doctrine of mutuality, Professor James Barr Ames, discussing the unsatisfactory results of the old rule of mutuality, suggests that all cases would be met by the following rule: “Equity will not compel specific performance by a defendant, if after performance the common-law remedy of damages would be his sole security for the performance of the plaintiff’s side of the contract”: 3 Col. Law Rev. 1. In the final analysis, it is seen that the test that Professor Ames suggests—is the defendant left to a remedy of damages?—is the test actually applied, however unconsciously, by the courts. *Lamprey v. St. Paul etc. Ry. Co.*, 89 Minn. 187, 94 N. W. 555, 557; here the court says: “The early equitable doctrine that it [the right to specific performance] must be mutual was based largely upon notions of expediency rather than principles of abstract

But in view of the firm place that the doctrine of mutuality has obtained in the courts of equity, it seems well to attempt a restatement that shall be more free from exceptions. The following form seems to meet the cases generally. If, at the time of the filing of the bill in equity, the contract being yet executory on both sides, the defendant, himself free from fraud or other personal bar, could not have the remedy of specific performance against the plaintiff, then the contract is so lacking in mutuality that equity will not compel the defendant to perform but will leave the plaintiff to his remedy at law.³² This rule, it is believed, covers the circumstances in equity where, according to the weight of authority, the court refuses its aid for lack of mutuality.

So far as there is a principle of mutuality, it is a mutuality of remedy in equity at the time of filing the bill that is required, and not a mutuality in the terms of the contract when the contract is made. Equity is entirely willing to grant plaintiff the performance he applies for, but if it finds that in doing so the defendant, without fault, is left in turn to a remedy at law only, it refuses to lend its aid to such an unequal re-

justice, and has been materially modified." In *Peterson v. Chase*, 115 Wis. 239, 91 N. W. 687, 688, the court, speaking of the rule of mutuality, observes, "The exceptions or apparent exceptions to it, are so numerous, and so important, that the decided cases illustrating them now constitute an almost equal volume of authority." Also in *Frank v. Stratford-Handcock* (Wyo.), 77 Pac. 134, the court says of the rule of mutuality, "The exceptions are so thoroughly established that it would seem more accurate to consider them as a part of, or modification of, the doctrine itself."

³² *Burdine v. Burdine*, 98 Va. 515, 81 Am. St. Rep. 741, 36 S. E. 992. An agreement to leave property at death to a servant if she would care for employer during his life. The court said that although there was no mutuality of remedies at the time of making the contract, the remedies were mutual at the time of the filing of the bill.

sult.³³ Therefore any original lack of mutuality in the terms of the contract will have no influence if the court finds that giving the plaintiff his relief will no longer leave the defendant to the law for relief. Keeping in mind this general principle enables a ready disposal of the so-called exceptions to the rule of mutuality. These cases will now be considered.

§ 770. 1. **Contracts Whose Terms are not Mutual**—(a) **Where Plaintiff Could Avoid Performance**.—Where a contract for the sale of lands is signed only by the defendant, it is clear that the plaintiff need never have performed his agreement. There was a clear lack of mutuality in the terms. Yet it was early held that the contract could be enforced against the party who had signed.³⁴ The cases all agree upon the point.³⁵ The filing of the bill made the *remedy* mutual. From that moment the defendant would not need to trust to the law for damages. The principle is consistently applied throughout. Thus, an infant cannot have specific performance, for the filing of the bill by his next friend does not bind him, and the lack of mutuality still continues.³⁶ But if the infant on reaching his majority files the bill on his voidable contract, he may now have specific performance,

³³ Chadwick v. Chadwick, 121 Ala. 580, 25 South. 631 (where a son agreed to support his mother for life, and the mother agreed to convey certain land to him, she will not be compelled to convey the land). To the same effect are Ikerd v. Beavers, 106 Ind. 483, 7 N. E. 326; O'Brien v. Perry, 130 Cal. 526, 62 Pac. 927.

³⁴ Hatton v. Gray, 2 Cas. Ch. 164.

³⁵ Bradford v. Parkhurst, 96 Cal. 102, 31 Am. St. Rep. 189, 30 Pac. 1106; Forthman v. Deters, 206 Ill. 159, 99 Am. St. Rep. 145, 69 N. E. 97; Burdine v. Burdine, 98 Va. 515, 81 Am. St. Rep. 741, 36 S. E. 992.

³⁶ Flight v. Bolland, 4 Russ. 299; Solt v. Anderson, 63 Neb. 734, 89 N. W. 306, 93 N. W. 205; Richards v. Green, 23 N. J. Eq. 536, 538; Ten Eyck v. Manning, 52 N. J. Eq. 47, 51, 27 Atl. 900; Farr v. Scott (Pa.), 4 Brewst. 49.

for any lack of mutuality is thereby cured.³⁷ The remedy has become mutual. Similarly, where a husband and wife seek to enforce their contract against the vendee, although no mutuality existed before, the vendee being unable to compel performance, the filing of the bill makes the remedy mutual, and equity is satisfied.³⁸

§ 771. (b) Where Plaintiff's Non-enforceable Promise has Been Performed.—There is a considerable class of cases where equity cannot compel performance of plaintiff's undertaking from the incapacity of the parties, or the nature of the plaintiff's promise. Of such character are agreements for personal service,³⁹ agreements to care for and support the defendant, agreements to furnish the services, or secure the assent, of third persons, agreements calling for the exercise of skill, taste, and discretion of the plaintiff, various kinds of agreements calling for continuous acts,⁴⁰ for building, and agreements where plaintiff's promise is too indefinite for equity to compel its execution.⁴¹ So long as such a contract remains executory, the filing of the bill does not make the

³⁷ Clayton v. Ashdown, 9 Vin. Abr. 393, pl. 2.

³⁸ Fennelly v. Anderson, 1 Ir. Eq. 706; Chamberlin v. Robertson, 31 Iowa, 408; Logan v. Bull, 78 Ky. 607; Freeman v. Stokes, 12 Phila. 219; Jarnigan v. Levisy, 6 Lea, 397; Mullens v. Big Creek etc. Co. (Tenn. Ch. App.), 35 S. W. 439; Hoover v. Calhoun, 16 Gratt. 109.

³⁹ Iron Age Pub. Co. v. Western Union Tel. Co., 83 Ala. 498, 3 Am. St. Rep. 758, 3 South. 449; Philadelphia Ball Club v. La Joie, 202 Pa. St. 210, 90 Am. St. Rep. 627, 51 Atl. 973, 52 L. R. A. 227; Thurber v. Meves, 119 Cal. 35, 50 Pac. 1063, 51 Pac. 536; Los Angeles & Bakersfield O. & D. Co. v. Occidental Oil Co., 144 Cal. 528, 78 Pac. 25; Harlow v. Oregonian Pub. Co. (Or.), 78 Pac. 737; Marble Co. v. Ripley, 10 Wall. 339, 358, 19 L. ed. 955; Prusiecke v. Ramzinski (Tex. Civ. App.), 81 S. W. 771; Baltimore Humane Impartial Soc. v. Pierce, 99 Md. 352, 58 Atl. 26. See, also, *ante*, § 759.

⁴⁰ Iron Age Pub. Co. v. Western Union Tel. Co., *supra*; Marble Co. v. Ripley, 10 Wall. 339, 358, 19 L. ed. 955.

⁴¹ Solt v. Anderson, 63 Neb. 734, 89 N. W. 306, 93 N. W. 205.

remedy mutual, and in these cases equity refuses specific performance against the defendant because of the lack of mutuality; in fact, because it would leave defendant in the unjust position of having no assurance of performance on plaintiff's part. But that equity is concerned only with the mutuality at the time of filing of the bill is clearly shown by those cases where the contract is *executed* on plaintiff's part. The terms are the same, but defendant would no longer need to trust an inadequate remedy at law, and equity compels him to perform;⁴² as, where plaintiff agreed to work for defendant a certain length of time, and defendant to make conveyance at once. Before plaintiff has performed the personal service, he could not have specific performance, but after his part is executed, he can get the land.⁴³

§ 772. (c) Where Plaintiff's Inability is Cured Before Decree.—A clear instance of this sort is the inability of the plaintiff to make a title, because the title is in another. The defendant may have known this at the time of the bargain. Equity will not compel him to perform before the title is in, but should the plaintiff get in the title before the decree, defendant must perform.⁴⁴

⁴² *Thurber v. Meves*, 119 Cal. 35, 50 Pac. 1053, 51 Pac. 536; *Dickson v. Stewart* (Neb.), 98 N. W. 1085; *Philadelphia Ball Club v. La Joie*, *supra*; *Rank v. Garvey*, 66 Neb. 767, 92 N. W. 1025, 99 N. W. 666; *Friend v. Mallory*, 52 W. Va. 53, 43 S. E. 115; *Burdine v. Burdine*, 98 Va. 515, 81 Am. St. Rep. 741, 36 S. E. 992; *Howe v. Watson*, 179 Mass. 30, 60 N. E. 415; *Burnell v. Bradbury*, 67 Kan. 762, 74 Pac. 279; *Moayon v. Moayon*, 24 Ky. Law Rep. 1641, 72 S. W. 33; *Baumhoff v. Oklahoma City E. & G. & P. Co.* (Okla.), 77 Pac. 40.

⁴³ *Prusiecke v. Ramzinski* (Tex. Civ. App.), 81 S. W. 771.

⁴⁴ *Reeves v. Dickey*, 10 Gratt. 138; *Tison v. Smith*, 8 Tex. 147; *Luckett v. Williamson*, 37 Mo. 388; *Oakey v. Cook*, 41 N. J. Eq. 350, 7 Atl. 495; *Guild v. Atchison R. R. Co.*, 57 Kan. 70, 57 Am. St. Rep. 312, 45 Pac. 82, 33 L. R. A. 77; *Bruce v. Tilson*, 25 N. Y. 194; *Jenkins v. Fahey*, 73 N. Y. 355; *Logan v. Bull*, 78 Ky. 607,

§ 773. 2. Unilateral Contracts—Options.—Unilateral contracts have really nothing to do with any rule of mutuality.⁴⁵ Before the act which constitutes the acceptance is completed, there is no contract for equity to consider. After such act is performed, and there is a unilateral contract, there cannot be any question of mutuality, as the promisor has already obtained his advantage and is bound to perform his part.

Courts of equity often speak of enforcing an option as if such enforcement were an apparent exception to the rule of mutuality.⁴⁶ In fact, mutuality has nothing to do ordinarily with contracts of option. The option is only a binding offer.⁴⁷ The promisor has parted with

618; Maryland Construction Co. v. Kuper, 90 Md. 529, 45 Atl. 197; Mussleman's Appeal, 65 Pa. St. 480, 71 Pa. St. 465; Lyles v. Kirkpatrick, 9 S. C. 265; Dresel v. Jordan, 104 Mass. 407; Hepburn v. Dunlop, 1 Wheat. 179, 196, 4 L. ed. 65 (specific performance will be given if title is made good any time before the decree); Murrell v. Goodyear, 1 De Gex, F. & J. 432; Langford v. Pitt, 2 P. Wms. 629; Mason v. Caldwell, 10 Ill. 196, 208, 209, 48 Am. Dec. 330; Core v. Wigner, 32 W. Va. 277, 9 S. E. 36. There are a number of cases *contra*, but it is apparent they do not represent the better view and are not consistent with the generally accepted principle that performance by plaintiff cures any lack of mutuality: See, *contra*, Norris v. Fox, 45 Fed. 406; Gage v. Cummings, 209 Ill. 120, 70 N. E. 679 (but the case relies on Fry's rule that mutuality must exist at time of making the contract); Luse v. Deitz, 46 Iowa, 205; Ten Eyck v. Manning, 52 N. J. Eq. 47, 51, 27 Atl. 900; Chilhowie v. Gardiner, 79 Va. 305. See the question discussed further, *post*, § 808.

⁴⁵ Spires v. Urbahn, 124 Cal. 110, 56 Pac. 794; Perkins v. Hadsell, 50 Ill. 216; Welsh v. Whelpley, 62 Mich. 15, 4 Am. St. Rep. 810, 28 N. W. 744.

⁴⁶ McCormick v. Stephany, 61 N. J. Eq. 208, 48 Atl. 25; O'Brien v. Bolland, 166 Mass. 481, 44 N. E. 602; Ide v. Leiser, 10 Mont. 5, 24 Am. St. Rep. 17, 24 Pac. 695; Frank v. Stratford-Handcock (Wyo.), 77 Pac. 134; Hamilton v. Hamilton, 162 Ind. 430, 70 N. E. 535; Finlen v. Heinze, 28 Mont. 548, 73 Pac. 123.

⁴⁷ Rease v. Kittle (W. Va.), 49 S. E. 150 (contracts of option convey no equitable title).

the right to withdraw his offer.⁴⁸ There is nothing to enforce in equity before the exercise of the option, as the promisee has already obtained his right,—to have the offer kept open. Upon the exercise of the option, i. e., the acceptance of the offer,—and the filing of the bill by the promisee would be one way of exercising it,—the option ceases as an option, and equity has an ordinary bilateral contract to deal with.⁴⁹ Thus it is usually said that an option to renew a lease is enforceable at the will of the lessee having the option. In fact the lessee must first exercise his option, and then he has a binding contract for the renewal, and not an option.⁵⁰ It can make no difference that defendant has tried to withdraw the option. He bound himself not to do so. This view is further supported by the enforcement of an exercised option which was under seal, and without actual consideration.⁵¹ The offer being under seal cannot be withdrawn. Upon its acceptance, the court cannot be concerned with the lack of con-

48 *O'Brien v. Bolland*, *supra*: The defendant sent word that he withdrew his offer (the option), which was under seal. The plaintiff then sent an acceptance. The court said: "In the present case, because the offer was under seal, it was an irrevocable covenant, conditional upon acceptance within ten days, and the written acceptance within that time made it a mutual contract which plaintiff can enforce."

49 *Finlen v. Heinze* (Mont.), 80 Pac. 918; *O'Brien v. Bolland*, 166 Mass. 481, 44 N. E. 602.

50 *O'Brien v. Bolland*, *supra*.

51 *Borel v. Mead*, 3 N. Mex. 84, 2 Pac. 222; *O'Brien v. Bolland*, 166 Mass. 481, 44 N. E. 602. The cases *contra*, *Crandall v. Willig*, 166 Ill. 233, 46 N. E. 755, and *Graybill v. Brugh*, 89 Va. 895, 37 Am. St. Rep. 894, 17 S. E. 558, 21 L. R. A. 133, must be considered as wrong in principle, overlooking the fact that it is a contract and not an offer, the enforcement of which is sought. *Graybill v. Brugh* should rest upon another ground—intervening equitable right of a third party,—if it is to be supported.

Equitable Remedies, Vol. II—82

sideration (which is a good defense to specific performance in equity), for it is the contract and not the option that is being enforced. There is a class of option contracts, that are not in the nature of a mere binding offer which may be made into a bilateral contract by the exercise of the option, but are themselves bilateral contracts for a privilege which may be exercised by the promisee, but which he is under no obligation to exercise. These options are usually for mining or prospecting privileges. Where the option is so worded that the exercise of the privilege may be delayed indefinitely, specific performance is refused, and the refusal is sometimes based on the ground of lack of mutuality.⁵² In such cases the right obtained by the option, to prospect or not, since it keeps the defendant out of the use of his land for an indefinite time, is bad for inequality and indefiniteness rather than for lack of mutuality.

§ 774. **Contracts Terminable at the Will of One Party.**—Some courts have refused to enforce contracts by the terms of which the plaintiff can at pleasure put an end to his obligation, on the ground that the remedy was not mutual, as the plaintiff could always defeat specific performance against him, either before the decree by terminating the contract, or after the decree by rendering any decree against him nugatory by terminating his obligation.⁵³ Thus, in a lease of a mine for exploration and working, the plaintiffs had the right to terminate the lease on thirty days' notice. Specific performance was refused, for lack of mutuality.⁵⁴ But the better view is that by the circuit court in *Singer*

⁵² *Federal Oil Co. v. Western Oil Co.*, 121 Fed. 674, 57 C. C. A. 423.

⁵³ *Marble Co. v. Ripley*, 10 Wall. 339, 359, 19 L. ed. 955.

⁵⁴ *Rust v. Conrad*, 47 Mich. 449, 41 Am. Rep. 730, 11 N. W. 265; *Marble Co. v. Ripley*, 10 Wall. 339, 19 L. ed. 955. This decision must be considered *contra* to the desires of the persons generally

Sewing Machine Co. v. The Button-Hole Co.⁵⁵ There the court held that the objection of lack of mutuality would not prevent the enforcement of the contract, so long as it was actually kept alive by plaintiff's continued performance.

§ 775. Indirect Enforcement by Enjoining the Breach of Defendant's Negative Covenant.—A similar objection, for lack of mutuality, is urged to the indirect enforcement of a contract by an injunction against the violation of a negative clause of the defendant's agreement, where neither the defendant nor the plaintiff could have specific performance of the affirmative side of the agreement,⁵⁶ as in the case where defendant agrees to sing in plaintiff's theater, and in no other place.⁵⁷ But the answer of equity is a *conditional* decree—an injunction which is good so long as plaintiff continues to do his part, but dissolvable upon his failure to perform.⁵⁸

concerned, as a statute was passed a year later by the Michigan legislature making such contracts enforceable. See Grammett v. Gingrass, 77 Mich. 369, 43 N. W. 999; Brooklyn Club v. McGuire, 116 Fed. 782, 783; Iron Age Pub. Co. v. Western Union Tel. Co., 83 Ala. 498, 509, 3 Am. St. Rep. 758, 3 South. 449; Harrisburg Club v. Athletic Assn., 8 Pa. Co. Ct. Rep. 337, 342.

⁵⁵ Sturgis v. Galindo, 59 Cal. 28, 31, 43 Am. Rep. 239; Singer Sewing Machine Co. v. Union Button-Hole etc. Co., 1 Holmes, 253, Fed. Cas. No. 12,904; Philadelphia Ball Club v. La Joie, 202 Pa. St. 210, 90 Am. St. Rep. 627, 51 Atl. 973, 58 L. R. A. 227.

⁵⁶ Philadelphia Ball Club v. La Joie, 202 Pa. St. 210, 90 Am. St. Rep. 627, 51 Atl. 973, 58 L. R. A. 227.

⁵⁷ Lumley v. Wagner, 1 De Gex, M. & G. 604.

⁵⁸ Stocker v. Wedderburn, 3 Kay & J. 393, 404; for a good instance of the flexibility of a conditional decree, see McCaul v. Braham, 16 Fed. 37, 42. See, also, Metropolitan Co. v. Ewing, 42 Fed. 198, 7 L. R. A. 381; Arena etc. Club v. McPartland, 41 App. Div. 352, 58 N. Y. Supp. 477, 478; Singer Co. v. Union Button-Hole Co., 1 Holmes, 255, 257, Fed. Cas. No. 12,904; Philadelphia Ball Club v. La Joie, 202 Pa. St. 210, 90 Am. St. Rep. 627, 58 L. R. A. 227, 51 Atl. 973 ("If granted now, it [the injunction] can be easily dissolved whenever a change of circumstances or in the attitude of the plaintiff should

While a clear lack of mutuality exists in the terms of the agreement, inasmuch as one of the terms is unenforceable in equity, yet the final test shows that the remedy of a conditional decree does not leave the defendant to a legal remedy, as plaintiff must give performance so long as he receives it. In *Hills v. Croll*⁵⁹ the court refused to grant the injunction against breach of the negative covenant on the ground of lack of mutuality, as it could not enforce the affirmative part of the agreement. But the case is inconsistent with the ruling case of *Lumley v. Wagner*,⁶⁰ as since pointed out by the English judges,⁶¹ and cannot be now regarded as sound.⁶²

§ 776. **Fraud or Other Personal Bar of the Defendant.**—There is no lack of mutuality, in the eye of equity, where the defendant's inability to enforce the contract arises from any inequitable conduct on his part, such as sharp practice, fraud, concealment, unfairness, etc., which creates a personal bar against his obtaining specific performance. His lack of remedy from his own act is no defense to the complainant's petition.⁶³

§ 777. **Mistake; Rescission and Reformation.**—As mistake is no defense in a court of law to the obligation under his contract, one must look for relief, if at all, in equity. For certain kinds of mistakes equity will give the affirmative relief of rescission, or reformation

seem to require it'''); *Port Clinton R. R. Co. v. Cleveland & Tol. R. R. Co.*, 13 Ohio St. 544, 550 (*semble*).

⁵⁹ *Hills v. Croll*, 2 Phill. Ch. 60.

⁶⁰ *Lumley v. Wagner*, *supra*.

⁶¹ *Catt v. Tourle*, 4 Ch. App. 654, 660.

⁶² *Dietrichsen v. Cabburn*, 2 Phill. Ch. 52.

⁶³ *Ex parte Lacey*, 6 Ves. 625; *South Eastern Co. v. Knott*, 10 Hare, 122.

with specific performance.⁶⁴ For other kinds of mistake only the negative relief is given of a refusal to decree specific performance against the defendant setting up the defense of mistake. And in many cases of mistake, no relief of any kind is obtainable.

The affirmative relief of rescission or reformation is given, generally speaking, in cases of mutual mistake, either where the mistake was in the formal deed or contract, which by mutual mistake or a mistake of the draftsman, fails to correspond to the real agreement, in which case a reformation is usually decreed, often with specific performance, or where by mutual mistake the agreement itself does not express what the parties intended, in which case there may be a rescission, or under some circumstances reformation of the intended agreement.⁶⁵ But we are here more particularly concerned with that class of mistakes which only serve as a defense to a suit for specific performance.

§ 778. What Mistakes are a Defense to Specific Performance.—In the cases of mistake, as in other matters in equity, it is plain that a set of circumstances insufficient to give a right to the radical step of rescission, in which all rights in law or equity are canceled, may well be sufficient for equity, using its discretionary

⁶⁴ *Newland v. First Baptist Church* (Mich.), 100 N. W. 612.

⁶⁵ See *ante*, chapter XXXII; 2 Pom. Eq. Jur., § 870. The elements of mistake of law requisite to any equitable relief have been fully considered in 2 Pom. Eq. Jur., §§ 841-851; of mistake of fact, *Id.*, §§ 852-856. As to parol evidence of mistake, fraud, or surprise, see *Id.*, §§ 857-859; defense of mistake in suits for specific performance *Id.*, § 860, and §§ 778-783 in the present treatise; proof of mistake on plaintiff's part in same suits, Pom. Eq. Jur., §§ 861-863; effect of statute of frauds on the proof of mistake, fraud, or surprise, *Id.*, §§ 864-867. The sections here following deal with the somewhat exceptional instances where mistake is a defense to a suit for specific performance, but probably would not warrant rescission or reformation at the suit of the defendant therein.

power, to refuse its aid to enforce the contract against the party making the mistake, although it will not protect him from the consequences of his contract in law. Mutual mistake which gives a right to reformation or rescission, would of course give a right to the lesser relief of refusal of specific performance if the affirmative relief were not insisted upon. Usually, in the cases to be described, where relief is given, it will be found that the question is not purely one of mistake, but the related principles of hardship or unfairness, of sharp practice, or innocent misrepresentation, in combination with the mistake, determine equity to refuse its aid to the plaintiff, although the court may ground its decision on mistake. But there are certain principles of relief growing out of pure mistake which will now be examined.

§ 779. **Misdescription and Ambiguity.**—Where the terms are so ambiguous that the defendant could reasonably, and did in fact, put a different meaning upon them than the plaintiff, it is clear there was never the requisite *consensus ad idem*, and no valid contract at law or in equity.⁶⁶ But even where there is a sufficient *consensus ad idem* to make a contract valid and enforceable at law, if equity is satisfied that there was sufficient misdescription or ambiguity as to the *substance* of the contract for the defendant to be justified reasonably in the mistake made by him in understanding the particulars of the contract, equity will not decree a specific performance against him.⁶⁷

⁶⁶ *Raffles v. Wichelham*, 2 Hurl. & C. 906.

⁶⁷ *Burekhalter v. Jones*, 32 Kan. 5, 3 Pac. 559; *Swaisland v. Dearsley*, 29 Beav. 430; *Higginson v. Clowes*, 15 Ves. 516, 524; *Denny v. Hancock*, 6 Ch. App. 1. See 2 Pom. Eq. Jur. (3d ed.), § 860, note 3, where this principle is fully stated. But a misinterpretation of the contract by the plaintiff will not prevent him from enforcing specific performance: *Preston v. Luck*, 27 Ch. D. 497.

§ 780. **Mistake Induced, or Contributed to, by the Plaintiff.**—Wherever the mistake was materially contributed to, or induced by the acts or words of the plaintiff, equity will not decree a specific performance against the defendant, if the mistake is material.⁶⁸ The plaintiff's part in misleading the defendant, whether the plaintiff was innocent in intention or not, prevents him from casting the consequences of the mistake on the defendant by the aid of equity.

§ 781. **Mistake Known to Plaintiff.**—When the plaintiff knows of the defendant's mistake, or must reasonably suppose a mistake had been made, the circumstances are often such that the plaintiff cannot equitably ask a court of chancery to force a hard bargain due to this mistake on the defendant.⁶⁹ A mistake which in itself might not be sufficient ground to save the defendant from his bargain, may often protect the defendant when the plaintiff knew of the advantage he was getting when the contract was made.⁷⁰

§ 782. **Mistake Due to Defendant's Negligence.**—Where the court is satisfied that the mistake is due to the defendant's culpable negligence, it will not, as a general rule, accept the mistake as a defense, the plaintiff not being barred himself by any act of inequitable advantage.⁷¹

⁶⁸ *Denny v. Hancock*, L. R. 6 Ch. App. 1; *Mason v. Armitage*, 13 Ves. 25; *Goddard v. Jeffreys*, 51 L. J. Ch. 57; *Bascombe v. Beckwith*, L. R. 8 Eq. 100; *Western R. R. Co. v. Babcock*, 6 Met. 346; *Van Praeger v. Everidge*, [1902] 2 Ch. App. 266, 271; 2 Pom. Eq. Jur. (3d ed.), § 860, at note 2.

⁶⁹ *Chute v. Quincy*, 156 Mass. 189, 30 N. E. 550.

⁷⁰ *Chute v. Quincy*, *supra*; *Twining v. Neil*, 38 N. J. Eq. 470; *Boorum v. Tucker*, 51 N. J. Eq. 135, 141, 26 Atl. 456; *Mansfield v. Sherman*, 81 Me. 365, 17 Atl. 300; *Webster v. Cecil*, 30 Beav. 62.

⁷¹ *Tamplin v. James*, L. R. 15 Ch. D. 215; *Caldwell v. Depew*, 40

§ 783. **Mistake Due Solely to Defendant.**—The most difficult cases are those where the mistake is due solely to the defendant, without negligence on his part, or inducement or advantage taken by the plaintiff. It is plain that not every material mistake in such a case will enable the defendant to avoid performance of the contract.⁷² The rule may be stated that where the mistake is solely due to the defendant, but without his fault, equity will refuse specific performance only where the mistake is of a vital part of the contract,—of the *corpus* of the agreement,—and of such nature that enforcement would be a great hardship.⁷³ Thus, it is said by Justice Fry that for a mere mistake in acreage equity will not refuse specific performance. “The mistake is not one which goes to the *corpus* with which the court deals. It is not a mistake as to the essential part. . . . A mere difference in quantity has never been held to be a bar to specific performance.”⁷⁴ Where the mistake is such that the whole contract is one the

Minn. 528, 42 N. W. 479; *Western R. R. Co. v. Babcock*, 6 Met. 346; *McKenzie v. Hesketh*, 7 Ch. D. 675, 682; *Cape Fear Lumber Co. v. Matheson* (S. C.), 48 S. E. 111; 2 Pom. Eq. Jur. (3d ed.), § 856, at note 2. For an instructive instance of negligence not culpable within the meaning of the rule, see *Denny v. Hancock*, L. R. 6 Ch. App. 1.

⁷² *Tamplin v. James*, L. R. 15 Ch. D. 215 (leading English case on mistake, holds that defendant's mistake must be vital); *Stewart v. Kennedy*, L. R. 15 App. Cas. 75, 105; *Van Praeger v. Everidge*, [1902] 2 Ch. App. 266, 271; *Caldwell v. Depew*, 40 Minn. 528, 42 N. W. 479.

⁷³ *Webster v. Cecil*, 30 Beav. 62; *Malins v. Freeman*, 2 Keen, 25; *Mansfield v. Sherman*, 81 Me. 365, 17 Atl. 300; *Goddard v. Jeffreys*, 51 L. J. Ch. 57, where Kay, J., states the rule: “If he [the defendant] was not misled by any act of the vendors—if the mistake was entirely his own—then the court ought not to let him off his bargain on the ground of a mistake made by himself solely, unless the case is one of considerable harshness and hardship”; *Leslie v. Thompson*, 9 Hare, 268, 273; *Day v. Wells*, 30 Beav. 220; *Van Praeger v. Everidge*, [1902] 2 Ch. App. 266, 271.

⁷⁴ *McKenzie v. Hesketh*, L. R. 7 Ch. D. 675, 682.

defendant had no intention of entering into, as where the defendant bid in one lot of land thinking it was an entirely different piece,⁷⁵ equity will not compel him to perform the agreement; neither will it where the mistake, though not total, is so great that it should have suggested to the plaintiff that a mistake had been made,⁷⁶ or if that element be lacking, where the difference arising from the mistake is so great that the defendant is subjected to an entirely different operation of the contract, hard and oppressive upon him.⁷⁷

It is thus apparent that in most cases of mistake solely due to the defendant, the court is finally governed by the principle of hardship and unfairness equally with that of mistake.

Where the defendant's mistake is solely due to a failure to make an inquiry which he was bound to make, he cannot object to the results of his negligence, and performance will be given against him.⁷⁸

§ 784. Concealment or Non-disclosure of Material Facts as a Defense.—The doctrine of equity relating to those fraudulent concealments which furnish a basis for the remedy of rescission or cancellation, and, a *fortiori*, a defense to specific performance, has been fully described elsewhere.⁷⁹ It was there shown that such concealment, as distinguished from misrepresentation,⁸⁰ is, in

⁷⁵ *Malins v. Freeman*, 2 Keen, 25.

⁷⁶ *Webster v. Cecil*, 30 Beav. 62. See *supra*, § 781.

⁷⁷ *Baxendale v. Seale*, 19 Beav. 601; *Chute v. Quincy*, 156 Mass. 189, 30 N. E. 550; *Day v. Wells*, 30 Beav. 220; *Western R. R. Co. v. Babcock*, 6 Met. 346.

⁷⁸ *Tamplin v. James*, L. R. 15 Ch. D. 215.

⁷⁹ In 2 Pom. Eq. Jur., §§ 900-907.

⁸⁰ As to the elements of misrepresentation requisite to equitable relief in general, see 2 Pom. Eq. Jur., §§ 876-899. That innocent misrepresentations are a defense to specific performance, see *Id.*, § 889.

general, a ground for avoiding the contract only where it involves the breach of some fiduciary duty to disclose the whole truth—a duty arising either (1) from a pre-existing relation of confidence between the parties, or (2) from a confidence reposed, by one party in the other, in the particular transaction in question, or (3) from the essential nature of the contract itself.⁸¹ It was also there intimated that the mere non-disclosure of a material fact known only to one party, in circumstances that do not afford sufficient ground for the cancellation of the contract, may nevertheless influence the court to refuse specific performance of the contract against the party who was misled.⁸² This view is supported by *dicta* of the highest authority, and by many decisions; and it may fairly be said to be a general rule of American equity that non-disclosure by the complainant of material facts, knowledge of which was obtained by superior facilities of information on his part, of which facts the defendant was ignorant, and was known by the complainant to be ignorant, is, in connection with marked inadequacy of consideration, sufficient to render the contract too unfair and unconscionable for specific enforcement.⁸³

⁸¹ 2 Pom. Eq. Jur., § 902, and cases cited; concealments by a vendee, § 903; concealments by a vendor, § 904. The chief instance of the third class—contracts essentially fiduciary—is the contract of insurance: *Id.*, § 907.

⁸² 2 Pom. Eq. Jur., § 905.

⁸³ The cases generally concern the vendee's failure to disclose facts known to him, greatly enhancing the value of the land. Chancellor Walworth said by way of *dictum*, in *Livingston v. Peru Iron Co.*, 2 Paige, 390, 391: "I am not aware of any case in our own courts, or in England, where the simple suppression, by the buyer, of a fact which materially enhanced the value of the property, has been deemed sufficient to set aside the sale, on the ground of fraud. The rule is different where the purchaser applies to a court of equity to enforce the specific performance of an agreement. In such a case this court will not enforce a specific performance

§ 785. **Unfairness and Hardship as a Defense to Specific Performance.**—"The contract must be perfectly fair, equal, and just in its terms and its circumstances. The contract and the situation of the parties must be such

of the contract, if the complainant has intentionally concealed a material fact from the adverse party, the disclosure of which would have prevented the making of the agreement; but he will be left to his remedy at law." To the same effect are statements by Chancellor Kent, 2 Comm. 490, approved by Judge Story, 1 Eq. Jur., § 206; by Kindersley, V. C., in *Faleke v. Gray*, 28 L. J. Ch. 28, 31; by Brewer, J., in *Missouri R. Ft. S. & G. R. Co. v. Brickley*, 21 Kan. 275. See, also, decisions in *Byars v. Stubbs*, 85 Ala. 256, 4 South. 755, quoting 2 Pom. Eq. Jur., § 905 (in this case, however, the vendor had offered to constitute the vendee, plaintiff, his agent for the purpose of effecting a sale, so that the non-disclosure may possibly be viewed as a breach of confidence); *Margraf v. Muir*, 57 N. Y. 155 ("The plaintiff lived near the lot and knew its value. The defendant lived at a distance and did not know its value. While the plaintiff did not make any misrepresentations, he concealed his knowledge of the recent rise in value of the lot and took advantage of her ignorance, and thus got from her a contract to convey to him the lot for but a little more than one-third of its value." The contract was held unconscionable, and the plaintiff left to his recovery of damages); *Woolums v. Horsley*, 93 Ky. 582, 20 S. W. 781 (land worth fifteen dollars an acre purchased for forty cents an acre; vendee knew of vendor's ignorance of its value as mineral land; vendor aged, feeble and uneducated; contract held unconscionable); *Hetfield v. Willey*, 105 Ill. 286 (suit by vendor of a partnership interest; vendor did not disclose certain large liabilities of the firm which did not appear on the firm's books, but made no representations as to the value of his interest; specific performance refused); *Trigg v. Read*, 5 Humph. (Tenn.) 529, 541, 542. In all these cases the complainant had facilities which the defendant did not possess, for knowing the real value of the property. This circumstance was lacking, however, in *Cowan v. Sapp*, 81 Ala. 525, 8 South. 212 (agreement to compromise a debt, entered into by a creditor in ignorance of a judgment, execution and levy, made on creditor's behalf on debtor's lands in another state, which facts were known to the debtor but not to the creditor; though debtor may have supposed that creditor was apprised of these facts, contract "can scarcely be said to be just, fair, and reasonable," so as to entitle debtor to specific performance of the compromise agreement). In striking contrast with the last-named case, see the decision in *Turner v. Green*, [1895] 2 Ch. 205, where a party to a compromise

that the remedy of specific performance will not be harsh or oppressive.”⁸⁴ “If, then, the contract itself is unfair, one-sided, unjust, unconscionable, or affected by any other inequitable feature; or if its enforcement would be oppressive or hard on the defendant, or would prevent his enjoyment of his own rights, or would work any injustice; or if the plaintiff has obtained it by sharp and unscrupulous practices, by overreaching, by trickery, by taking undue advantage of his position, by non-disclosure of material facts, or by any other unconscientious means,—then a specific performance will be refused. It necessarily follows that a *less strong case* is sufficient to *defeat* a suit for specific performance than is requisite to obtain the remedy.”⁸⁵ “The oppression or hardship may result from unconscionable provisions of the contract itself; or it may result from the situation of the parties, unconnected with the terms of the contract or with the circumstances of its negotiation and execution; that is, from external facts or events or circumstances which control or affect the situation of the defendant.”⁸⁶

The foregoing statement of the equitable doctrine of hardship is best understood by an analysis of the circumstances where equity has found that kind and de-

agreement failed to communicate knowledge, just received by telegraph, of a decision in the pending litigation favorable to the other. The judgment of Chitty, J., granting specific performance of the agreement, treats concealment as a defense to specific performance as based solely on the breach of some fiduciary duty—an illustration of the recent tendency of the English courts to the narrowing of equitable doctrines. It seems difficult to reconcile the case, on principle, with those in which the defendant’s mistake was obvious to the plaintiff, and relief was refused on that ground: *Ante*, § 781. See, also, *Phillips v. Homfray*, L. R. 6 Ch. App. 770, in 2 Pom. Eq. Jur., § 903, note 2.

⁸⁴ Pom. Eq. Jur. (3d ed.), § 1405.

⁸⁵ Pom. Eq. Jur. (3d ed.), § 1405, note 5.

⁸⁶ Pom. Eq. Jur. (3d ed.), § 1405, note 6.

gree of hardship which leads it to refuse its aid. Such analysis indicates that the hardship which defeats specific performance usually arises from one or more of the grounds following.

§ 786. **Unfairness and Advantage.**—The plaintiff's conduct may amount to a personal bar to specific performance, as in the cases of sharp practice, concealment, contrivance, etc., or even if he is not barred by inequitable conduct, he may have obtained the contract under such conditions of advantage, that equity regards it as unfair, and its enforcement a hardship. Such cases arise where the plaintiff takes advantage of the condition of the defendant, as of his pressing necessity, to drive a very hard bargain.⁸⁷

§ 787. **Inequality.**—Even though the plaintiff was free from intention to take an unfair advantage, if the actual result is an inequality and unfair advantage, equity will not aid the plaintiff. The inequality which equity regards may be of two kinds, (a) that in the *inception*, existing when the contract is made, either between the parties or arising from the situation;⁸⁸ as, where defendant acted under great and pressing necessity, or was otherwise at a disadvantage by reason of old age, mental weakness, poverty, ignorance, inexperience, sex, etc., or (b) that inequality which the court of equity finds in the *operation* of the contract,⁸⁹ as where the

⁸⁷ *Fish v. Leser*, 69 Ill. 394; *Union Coal Mining Co. v. McAdam*, 38 Iowa, 663, 664. See, also, 2 Pbm. Eq. Jur., § 948, on the subject of this and the following sections.

⁸⁸ *Cuff v. Dorland*, 50 Barb. 438; *Friend v. Lamb*, 152 Pa. St. 529, 34 Am. St. Rep. 672, 25 Atl. 577.

⁸⁹ *East St. Louis Ry. Co. v. E. St. Louis*, 182 Ill. 433, 439, 55 N. E. 533 (franchise not exercised for ten years. The city's growth had greatly increased value of the franchise. The company was not allowed to exercise the franchise. "The court will not decree

terms are so indefinite, unqualified, or assented to with such lack of caution, that their enforcement would produce an inequality not foreseen by the defendant. Thus, in the first instance, (a) where a buyer dealt with an aged invalid woman, without male advisers, although the buyer used no undue influence, took no advantage, and gave a fair price, he was refused specific performance as he had not taken the precaution to call in male advisers to render their situation equal.⁹⁰ (b) Of the second type, inequality in operation, is that class of numerous oil-lease cases, where for a slight consideration and an agreement to give royalties, the plaintiff has the right to prospect for oil on defendant's land, and no time limit is set upon this right. As he is not obliged to make any prospect, and may indefinitely keep the defendant out of the use of his land, the operation of the contract is so unequal that equity declines to enforce it.⁹¹

specific performance of a contract grossly unequal in its terms); *Sanders v. Newton*, 140 Ala. 335, 37 South. 340 (here the defendant was to convey land and pay a sum of money, plaintiff to deliver in return certain machinery. By the terms plaintiff could keep all the machinery as security for the money, and yet demand conveyance of the land. The court refused to decree a conveyance of the land, on the ground of inequality); *Goodwin v. Kelley* (Ind. App.), 70 N. E. 832 (where the defendant was bound to give immediate delivery of a grocery business, and plaintiff later to convey certain land of which he did not then have the title, and pay a sum of money. Equity refused to compel a conveyance of the grocery store, as it would place the defendant at a disadvantage if the plaintiff should not get in the title to the land); *Ferguson v. Blackwell*, 8 Okla. 489, 58 Pac. 647 (unqualified agreement to give one-half of profits in any business defendant should engage in is "so manifestly over-balanced in favor of the plaintiff that it will not receive the aid of a court of equity").

⁹⁰ *Cuff v. Dorland*, 50 Barb. 438.

⁹¹ *Federal Oil Co. v. Western Oil Co.*, 121 Fed. 674, 57 C. C. A. 428; similarly see *Federal Oil Co. v. Western Oil Co.*, 112 Fed. 373; *Berry v. Frisbie* (Ky.), 86 S. W. 558.

§ 788. **Intoxication.**—Complete intoxication, such that the defendant had no comprehension of his act, “that extreme state of intoxication that deprives a man of his reason,”⁹² would be ground for complete relief in equity,⁹³ rescission, as well as a defense to specific performance. Ordinary intoxication is not a ground for rescission where the plaintiff did not cause it or make it a means of fraud, but it generally has the effect of neutralizing the equities of the parties, in a suit for specific performance, so that the court “will not act on either side.”⁹⁴ As the Master of the Rolls, Sir William Grant, said, “A court of equity ought not to give its assistance to a person who has obtained an agreement or deed from another in a state of intoxication.”⁹⁵ But, “intoxication which merely exhilarates and does not materially affect the understanding and the will, does not constitute a defense to the enforcement of an executory agreement, and much less is it any ground for affirmative relief.”⁹⁶

§ 789. **Improvidence of the Undertaking.**—Under some circumstances, especially where any inequality exists between the parties, a highly improvident contract will not be enforced, as in the instance of a widow without capital agreeing to purchase an estate for fifty thousand dollars, in installments. The court found it was so probable that she was undertaking an arrangement that could only end in disaster for her, that it would not force the bargain upon her.⁹⁷ A better instance of pure

⁹² *Cook v. Clayworth*, 18 Ves. 12, 15.

⁹³ *Ibid.* On this subject, see, further, 2 Pom. Eq. Jur., § 949.

⁹⁴ *Cragg v. Holme*, 18 Ves. 14, note (12).

⁹⁵ *Cook v. Clayworth*, 18 Ves. 12, 15.

⁹⁶ Pom. Eq. Jur., § 949, note 1, and cases cited.

⁹⁷ *Friend v. Lamb*, 152 Pa. St. 529, 34 Am. St. Rep. 672, 25 Atl. 577.

improvidence without inequality is found in the defendant's undertaking to assign in gross all his future inventions; equity refused to compel the observance of this agreement.⁹⁸ Where a woman agreed to convey land valued at twelve hundred dollars for a horse worth one hundred dollars, equity would not force her to convey the land.⁹⁹ On the other hand, where no other element enters than a bad bargain or mere inadequacy in consideration, it is the rule in equity to enforce the contract. The mere fact that defendant entered into a losing bargain or one where plaintiff will reap great gains is clearly never a ground to refuse specific performance.¹⁰⁰

§ 790. Inadequacy of Consideration with Other Grounds.—The usual statement of the modern rule is that mere inadequacy of consideration is not such hardship as will prevent specific performance,¹⁰¹ unless the inadequacy is so gross as to shock the conscience of the court and amount to decisive evidence of fraud.¹⁰² The earlier

⁹⁸ *Bates Mach. Co. v. Bates*, 87 Ill. App. 225.

⁹⁹ *Higgins v. Butler*, 78 Me. 520, 7 Atl. 276 (this case presented, however, the further elements of misapprehension of her rights by defendant, and conflicting and uncertain evidence).

¹⁰⁰ *Franklin Co. v. Harrison*, 145 U. S. 459, 12 Sup. Ct. 900, 36 L. ed. 776; *Whitted v. Fuquay*, 127 N. C. 68, 72, 37 S. E. 141; *Young v. Wright*, 4 Wis. 163, 65 Am. Dec. 303; *Clark v. Hutzler*, 96 Va. 73, 30 S. E. 469; *Southern Ry. Co. v. Franklin etc. R. R. Co.*, 96 Va. 694, 32 S. E. 485; *Lee v. Kirby*, 104 Mass. 420.

¹⁰¹ *Collier v. Brown*, 1 Cox, 428; *White v. Damon*, 7 Ves. 30; *Lowther v. Lowther*, 13 Ves. 95, 103; *Ready v. Noakes*, 29 N. J. Eq. 497, 499; *Franklin Co. v. Harrison*, 145 U. S. 459, 12 Sup. Ct. 900, 36 L. ed. 776; *Ayer v. Baumgarten*, 15 Ill. 444; *Western Co. v. Babcock*, 6 Met. 346; *Lee v. Kirby*, 104 Mass. 420.

¹⁰² *Ready v. Noakes*, 29 N. J. Eq. 497, 499; *Coles v. Trecothick*, 9 Ves. 246, where Lord Eldon says: "Unless the inadequacy of price is such as shocks the conscience and amounts in itself to conclusive and decisive evidence of fraud in the transaction, it is not itself a sufficient ground for refusing specific performance." For an anal-

cases were inclined to make mere inadequacy a sufficient hardship to defeat specific performance,¹⁰³ but this tendency was checked by Lord Eldon.¹⁰⁴ In a few modern cases equity has refused relief on the ground of mere gross inadequacy, such disproportionate advantage to the plaintiff that it "shocks the conscience of the court."¹⁰⁵ But courts generally do not admit this exception, but do give much weight to inadequacy when coupled with other evidence of hardship, as, some degree of inequality, improvidence, etc.¹⁰⁶

§ 791. **Unintended Harsh Consequence.**—Where the court is satisfied that the result which bears so hard upon the defendant, though legally a constituent part of the contract, was not intended by the parties at the time of the agreement,—in fact, was not in contemplation as the effect of the agreement, which was expressed in terms too unqualified,—it will not specifically enforce

ysis of the earlier and modern rule, see 2 Pom. Eq. Jur., §§ 926, 927, and notes, where Professor Pomeroy indicates that the gross inadequacy does not create a *presumption* of fraud, but may be evidence of fraud as a fact; *Borell v. Dann*, 2 Hare, 440, 450, where Vice-chancellor Wigram says the only exception is "where the inadequacy is so gross as of itself to prove fraud or imposition on the part of the purchaser."

¹⁰³ *Day v. Newman*, 2 Cox, 77, 80, 81; *Savile v. Savile*, 1 P. Wms. 744; *Underwood v. Hitchcox*, 1 Ves. Sr. 279.

¹⁰⁴ *Coles v. Trecothick*, 9 Ves. 246.

¹⁰⁵ *Traphaagen v. Kirk* (Mont.), 77 Pac. 58; *Thayer v. Younge*, 86 Ind. 259; *Prince v. Lamb*, 128 Cal. 120, 60 Pac. 689 (rests on provision of the Civil Code, § 3391); *Higgins v. Butler*, 78 Me. 520, 7 Atl. 276; *Clements v. Reid*, 17 Miss. (9 Smedes & M.) 535.

¹⁰⁶ *Higgins v. Butler*, 78 Me. 520, 7 Atl. 276 (The defendant, a woman, agreed to sell land worth twelve hundred dollars for a horse worth one hundred dollars. The court refused to enforce it. The several elements of inequality, inadequacy of consideration, and misapprehension of rights combine to lead the court to its conclusion).

the agreement.¹⁰⁷ Thus, where a lease of a water-front and wharves contained a covenant to make all repairs, and a flood of the river washed away and destroyed the property to a large extent, specific performance was refused.¹⁰⁸

§ 792. Inadvertent Covenant, or Act.—Analogous to the case of unintended consequence, is that arising from mere *inadvertence* of act or covenant,¹⁰⁹ as where a covenant bound trustees personally in a warranty of land sold under the trust.¹¹⁰ This was considered such an inadvertent assumption of a personal obligation that equity would not enforce it. Similarly in an auction sale, by an inadvertent act of a third party, there was a suppression of the bidding. Specific performance was therefore refused.¹¹¹

§ 793. Greatly Oppressive Consequence.—In rare instances the mere onerousness or oppressiveness of the

¹⁰⁷ *Ferguson v. Blackwell*, 8 Okla. 489, 58 Pac. 647 (here defendant agreed to give as consideration one-half of his profits in the cattle business, or of *any other business* he should engage in. The court refused to enforce such an unqualified and onerous term); *Talbot v. Ford*, 13 Sim. 173, 175 (where equity refused to enforce the covenant giving plaintiff a right to sell, at any time, the machinery by which defendant worked his mine. It would at once defeat the lease. "It was mere want of caution that this covenant was worded as it was; for I cannot suppose the parties could have intended that it should be expressed in the unqualified terms in which we find it"); *Kelley v. York Cliffs Co.*, 94 Me. 374, 47 Atl. 898; *Cathcart v. Robinson*, 5 Pet. 264, 8 L. ed. 120.

¹⁰⁸ *Waite v. O'Neil*, 72 Fed. 348.

¹⁰⁹ *Dunne v. Light*, 8 De Gex, M. & G. 774, 778, where defendant by oversight did not notice that the land he agreed to buy had no assurance of any rightful mode of access. The court said this hardship was enough "to neutralize the court"; *Twining v. Morrice*, 2 Bro. C. C. 326.

¹¹⁰ *Wedgwood v. Adams*, 6 Beav. 600.

¹¹¹ *Twining v. Morrice*, 2 Bro. C. C. 326.

consequences of enforcement may be so great that although there is no other reason, equity will not grant the performance that plaintiff is otherwise entitled to; as, where, by the clause of a certain will, the sale of the land would cause the loss to defendant of one-half the purchase-money, a large sum.¹¹² But generally speaking, where the defendant entered upon the contract with his eyes open, the hardship arising from collateral circumstances cannot give him a defense.¹¹³

§ 794. *Injury to Third Persons.*—Where the contract would be hard, unjust, and oppressive to innocent third persons, who have an interest in the subject-matter, equity will not enforce the contract;¹¹⁴ as, where the third person has a vested interest in the property which would be injuriously affected or defeated, as, a remainder-man, reversioner, etc., in the English law.¹¹⁵ An extreme illustration, of doubtful validity, is found in a case where an unmarried man contracted to leave by will all or the greater part of his property to the complainant, and later the promisor married, and died intestate. Equity refuses performance of the contract, as it observes that the natural right of the wife to be protected has intervened, and equity will not assist in divesting her of the property, but will leave the complainant to his legal remedy.¹¹⁶ Where a conveyance of a

¹¹² *Faine v. Brown*, 2 Ves. Sr. 307, cited.

¹¹³ *Franklin Co. v. Harrison*, 145 U. S. 459, 12 Sup. Ct. 900, 36 L. ed. 776; *Young v. Wright*, 4 Wis. 163, 65 Am. Dec. 303; *Adams v. Wease*, 1 Bro. C. C. 567; *Thompson v. Winter*, 42 Minn. 121, 123, 43 N. W. 796, 6 L. R. A. 246; *Prospect Park R. R. Co. v. Coney Is. R. R. Co.*, 144 N. Y. 152, 39 N. E. 17, 26 L. R. A. 610.

¹¹⁴ *Curran v. Holyoke Water Co.*, 116 Mass. 90; *Hale v. Bryant*, 109 Ill. 34; *Carlisle v. Carlisle*, 77 Ala. 339; *Owens v. McNally*, 113 Cal. 444, 45 Pac. 710, 33 L. R. A. 369.

¹¹⁵ *Thomas v. Dering*, 1 Keen, 729.

¹¹⁶ *Owens v. McNally*, 113 Cal. 444, 45 Pac. 710, 33 L. R. A. 369. See, also, *Gall v. Gall*, 64 Hun, 600, 611, 19 N. Y. Supp. 332.

lot, which projected beyond the common line of the neighboring lots ten feet, would inflict unnecessary injury to the adjoining proprietors, the court refused its aid to enforce the contract as made, but gave the vendor the option to accept conveyance of a lot with boundaries conforming to those adjoining, with compensation for the deficiency.¹¹⁷

§ 795. **Inconvenience to the Public.**—Where the consequence of enforcement of the contract is to inconvenience the public, the discretionary power of equity is exercised to refuse its aid.¹¹⁸ This rule is frequently applied in contracts by which a railway has bound itself to do some act, as to build a private grade crossing,¹¹⁹ or stop its trains at complainant's place.¹²⁰ If the public service would be endangered or inconvenienced, with no corresponding benefit to complainant, he cannot have performance. But not every slight inconvenience to the public will be a reason for refusing performance.¹²¹

§ 796. **Performance No Benefit to Plaintiff.**—Specific performance not being an absolute right, the fact that enforcement would be of little or no benefit to the complainant, and a burden upon the defendant, is sufficient to constitute performance oppressive, and it will not be

¹¹⁷ *Curran v. Holyoke Water Power Co.*, 116 Mass. 90.

¹¹⁸ *Conger v. New York W. S. & B. R. R. Co.*, 120 N. Y. 29, 23 N. E. 983 (agreement for stopping express trains near plaintiff's house, with no great benefit to plaintiff); *Curran v. Holyoke Water Power Co.*, 116 Mass. 90 (to enforce conveyance would injure neighborhood). See *ante*, § 761, at note 74.

¹¹⁹ *Goding v. Railroad Co.*, 94 Me. 542, 545, 48 Atl. 114.

¹²⁰ *Conger v. New York, W. S. & B. R. Co.*, *supra*; *Clark v. Rochester R. R. Co.*, 18 Barb. 350. See *ante*, § 761.

¹²¹ *Raphael v. Thames Val. R. R.*, L. R. 2 Ch. App. 147 (here the defendant was compelled to perform its agreement to make an approach for complainant's benefit in a particular manner).

given.¹²² The disproportion between the burden upon the defendant and the gain to the plaintiff makes performance inequitable. Instances are found in the cases of restrictive covenants on land, where, the character of the neighborhood having changed, as, from a residence to a business neighborhood, the whole purpose of the covenant is gone, and enforcement would be of no benefit to complainant.¹²³

§ 797. **Subsequent Events, Which Should have been Contemplated, No Defense.**—Courts of equity frequently state the rule to be that the hardship and unfairness must be judged of in relation to the time of making the contract, and that specific performance will not be refused because of hard conditions brought about by subsequent events, or changes in circumstances.¹²⁴ A more accurate formulation of the rule is this: equity will not relieve against hardship arising from a change in circumstances or the result of subsequent events, *where*

¹²² *Clark v. Rochester R. R. Co.*, 18 Barb. 350 (one ground for refusing specific performance of covenant to build a station and stop trains at plaintiff's home, was that it would be of but little benefit to plaintiff and a great burden upon defendant, "greatly disproportioned to the value of the land"); *Conger v. New York R. R.*, 120 N. Y. 29, 23 N. E. 983; *Miles v. Dover Furnace Co.*, 125 N. Y. 294, 297, 26 N. E. 261 (specific performance refused of a lease of the lower levels of a mine for twelve years, the court finding that such working would benefit plaintiff but little, and work almost a destruction of the mine); *Murdfeldt v. New York etc. R. R.*, 102 N. Y. 702, 7 N. E. 404 (where defendant had agreed to construct a passageway under its road. Enforcement denied in view of inutility of such passage to complainants, and difficulty of the construction).

¹²³ *Amerman v. Deane*, 132 N. Y. 355, 30 N. E. 741, 28 L. R. A. 584 (restrictive covenant. Change in character of neighborhood). See *ante*, volume I, chapter on "Injunction Against Breach of Contract."

¹²⁴ *Franklin Tel. Co. v. Harrison*, 145 U. S. 459, 472, 473, 12 Sup. Ct. 900, 36 L. ed. 776.

*these should have been in contemplation of the parties as possible contingencies,*¹²⁵ when they entered upon the agreement. And of such nature are the ordinary changes like a rise or fall in values, profit or loss in the undertaking, mistakes of judgment, unforeseen events, which yet were fairly possible contingencies, etc. Thus, no hardship arising from a great change in values between the time of making of the agreement and the conveyance can be a ground for any relief.¹²⁶ Nor can hardship arising from bad judgment, miscalculation, or changes of conditions that ought fairly to have been in contemplation of the defendant be considered by the court.¹²⁷ Those results of the contract are what the complainant has a clear right to receive, and defendant no equity for refusing. Thus, in a contract to lease a "feeder" line of railway for a number of years, with a covenant to keep the line in operation, the fact that the line has ceased to pay, and to operate it means a continued loss for several years, is no defense to a suit for specific performance.¹²⁸

125 *Marble Co. v. Ripley*, 10 Wall. 339, 357, 19 L. ed. 955.

126 *Young v. Wright*, 4 Wis. 163, 65 Am. Dec. 303; *Franklin Tel. Co. v. Harrison*, 145 U. S. 459, 472, 473, 12 Sup. Ct. 900, 36 L. ed. 776 (the court states that the want of equality and fairness must in general be judged of in relation to the time of the contract, and **not** by subsequent events. Mere decline in values is not enough).

127 In *Franklin Tel. Co. v. Harrison*, *supra*, by the rapid growth of population of New York and Philadelphia, the right to the exclusive use of a telegraph wire (leased for a small annual sum) became extremely valuable. Equity refused the complainant relief from the bargain which changing circumstances had made unequal: *Prospect Park & R. R. Co. v. Coney Is. R. R. Co.*, 144 N. Y. 152, 39 N. E. 17, 26 L. R. A. 610; *Marble Co. v. Ripley*, 10 Wall. 339, 356, 357, 19 L. ed. 955 (here the court observes it will not relieve from the hardship arising from the force of circumstances or changing events, when the hardship might have been contemplated, when the great loss or profit were "contingencies, the possibility of which might have been foreseen").

128 *Southern Ry. Co. v. Franklin P. R. Co.*, 96 Va. 693, 32 S. E. 485, 44 L. R. A. 297.

§ 798. Subsequent Events, not in Possible Contemplation, Often a Defense.—Illustration of such events may be found in cases where after the contract has been made, costly street improvements are ordered by the city, which enhance the value of the land, but fall as a burden upon the vendor, and equity will not give the vendee the land unless he will assume the cost of the assessments.¹²⁹ The leading case of *Willard v. Tayloe*¹³⁰ refused to compel a vendor to accept greatly depreciated paper, currency, legal tender,—which by both the general terms of his contract and the general law he was bound to do. In another instance, where the vendor had remained in possession and paid the outgoings for a long time after the contract was entered upon, and the land had nearly doubled in value, performance was refused on the ground, that as vendor's expenses had been so great, equal to about one-half the contract price, he would receive practically nothing for his property, and it would be against justice and conscience to compel him to convey it.¹³¹ Where there is delay on the plaintiff's part in claiming his rights, and changes of conditions may make specific performance an injustice, it will be refused.¹³²

¹²⁹ *King v. Baab*, 123 Iowa, 632, 99 N. W. 306; *Gotthelf v. Stranahan*, 138 N. Y. 345, 352, 34 N. E. 286, 20 L. R. A. 455. (Here the court said: "Where by reason of circumstances which have intervened between the making of the contract, and the bringing of the action, the enforcement of the equitable remedy would be inequitable, and produce results not within the intent or understanding of the parties when the bargain was made, and there has been no inexcusable laches, or inattention by the party resisting specific performance in not foreseeing and providing for contingencies which have subsequently arisen, the court may well refuse to specifically enforce the contract and will leave the party to his legal remedy").

¹³⁰ *Willard v. Tayloe*, 8 Wall. 557, 19 L. ed. 501.

¹³¹ *Fitzpatrick v. Dorland*, 27 Hun, 291.

¹³² *East St. Louis Ry. Co. v. East St. Louis*, 182 Ill. 433, 439, 55 N. E. 533; *Fitzpatrick v. Dorland*, 27 Hun, 291. See *post*, § 812.

§ 799. **Direct Act of Either Party.**—Where the hardship arises from defendant's own act, after the bargain, he cannot complain of the results of his own conduct.¹³³ The defendants "cannot be permitted to avail themselves of impediments of their own creation."¹³⁴ On the other hand, when the plaintiff's own conduct is the cause of the hardship defendant would incur by performance, and his conduct is not equitable, he cannot ask the aid of equity; as where the plaintiff allowed the insurance to expire just before the time of conveyance, gave no notice to defendant, and the house burned. The vice-chancellor held the complainant's conduct, though unintentional, and although not in violation of any legal duty, yet operated as a trap upon the defendant, and equity would not give its aid to the vendor.¹³⁵

§ 800. **Forfeiture.**—"When the performance of a contract will render the defendant liable to a forfeiture, the performance is a hardship, within the meaning of the general rule, and will not be decreed.¹³⁶ If, however, such liability is not a necessary, or natural effect of the agreement when originally made, but arises from the subsequent acts or omissions of the defendant himself,¹³⁷ it will not avail to prevent a specific enforcement."¹³⁸

133 *Helling v. Lumley*, 3 De Gex & J. 493, 500 (forfeiture brought about by defendant's affirmative act. Equity will not relieve him from it); *Lord Petre v. The Eastern Counties Ry. Co.*, 1 Railway Cases, 462, 479.

134 *Hawkes v. Eastern Ry. Co.*, 1 De Gex, M. & G. 737, 755.

135 *Dowson v. Solomon*, 1 Drew. & S. 1.

136 *Lasor v. Baldrige*, 32 Mo. App. 362, 366; *Faine v. Brown*, cited, 2 Ves. Sr. 307; *Peacock v. Penson*, 11 Beav. 355; *Henderson v. Hays*, 2 Watts. 148, 151; *Campbell v. Spencer*, 2 Binn. 133; *Nelson v. Kelly*, 91 Ala. 569, 8 South. 690.

137 *Helling v. Lumley*, 3 De Gex & J. 493, 498, 499; *Shade v. Oldroyd*, 39 Kan. 313, 18 Pac. 198. See also *supra*, § 799.

138 *Pom. Spec. Perf.*, § 190.

§ 801. **A Purchaser Need not Accept a Doubtful or Unmarketable Title.**—The rule is now well settled that equity will not compel an unwilling purchaser to accept a doubtful title which will expose him to the expense and hazard of litigation.¹³⁹ It will not force him to buy a lawsuit. He need not take the title unless it is marketable—i. e., merchantable—free from any defect that will affect its value in the eye of subsequent purchasers from the vendee.¹⁴⁰ “That may be a good title in law which a court of equity in the exercise of its discretionary power will not force on an unwilling purchaser.”¹⁴¹ “Every purchaser should have a title which shall enable him not only to hold his land, but to hold it in peace, and if he wishes to sell it, to be reasonably sure that no flaws or doubt will come up to disturb its marketable value.”¹⁴² “But a threat or even the possibility of a contest will not be sufficient. The doubt must be considerable and rational, such as would and ought to induce a prudent man to pause and hesitate; not based on captious, frivolous, and astute

¹³⁹ *Harding v. Olson*, 177 Ill. 298, 52 N. E. 482; *Richards v. Knight*, 64 N. J. Eq. 196, 53 Atl. 452; *Meyer v. Madreperla*, 68 N. J. L. 258, 96 Am. St. Rep. 536, 53 Atl. 477; *Baumeister v. Silver*, 98 Md. 418, 56 Atl. 825; *Hawes v. Swanzey*, 123 Iowa, 51, 98 N. W. 586 (but defect in title being cured before vendee's refusal, he is bound to accept it); *Lamprey v. Whitehead*, 64 N. J. Eq. 408, 54 Atl. 803; *McAllister v. Harman*, 101 Va. 17, 42 S. E. 920; *Sloan v. Rose*, 101 Va. 151, 43 S. E. 329; *Staplyton v. Scott*, 16 Ves. 272; *Hedderly v. Johnson*, 42 Minn. 443, 18 Am. St. Rep. 521, 44 N. W. 527, 528; *Lippincott v. Wikoff*, 54 N. J. Eq. 107, 33 Atl. 305, 308; *Hoyt v. Tuxbury*, 70 Ill. 333, 336; *Wesley v. Eels*, 177 U. S. 370, 20 Sup. Ct. 661, 44 L. ed. 810; *Marlow v. Smith*, 2 P. Wms. 198, 201; *Gill v. Wells*, 59 Md. 492, 495; *Hayes v. Harmony Grove Cemetery*, 108 Mass. 400, 402; *Chesman v. Cumming*, 142 Mass. 65, 7 N. E. 13, 14; *Cornell v. Andrews*, 35 N. J. Eq. 7; *Richmond v. Koenig*, 43 Minn. 480, 45 N. W. 1093, 1094.

¹⁴⁰ *Lippincott v. Wikoff*, *supra*.

¹⁴¹ *Dobbs v. Norcross*, 24 N. J. Eq. 327, 331.

¹⁴² *Ibid.*

niceties, but such as to produce real *bona fide* hesitation in the mind of the chancellor.”¹⁴³

§ 802. **The Standard for Determining a “Doubtful” Title.** While the general rule that equity will use its discretionary power and decline to force a doubtful title on a purchaser is everywhere recognized, there has been a considerable conflict of decision as to what principles should determine the “doubtfulness” of the title. It was early recognized that the title might be doubtful (1) because of doubt as to the general law or the construction of a statute, on which the title depended, or (2) because of doubt as to extrinsic facts or the construction of an instrument which affected title. The leading case of *Pyrke v. Waddingham*¹⁴⁴ held that as to matters of general law, the court was to judge whether the general law upon the point was or was not settled, and to refuse specific performance where it was in doubt as to the law, on the matter of construction, or in doubt as to extrinsic facts affecting the title. And that even where the court thought the title was good, yet if it thought that other competent persons might well entertain a contrary view, it should hold it doubtful and refuse to force it on the purchaser.

§ 803. (1) **Where the Doubt Arises from an Unsettled Question of Law.**—The later case of *Alexander v. Mills*¹⁴⁵ seemed to limit this broad view somewhat by making the court decide the doubt as to the law, not only where

¹⁴³ *Gill v. Wells*, 59 Md. 492, 495. Also, see *Hayes v. Harmony Grove Cemetery*, 108 Mass. 400, 402, where the court says the mere possibility of a defect, as that debts may be later discovered to be a charge upon the land, is not such a defect as to throw a doubt on the title, where there is no affirmative evidence of the existence of such debts.

¹⁴⁴ *Pyrke v. Waddingham* (1850), 10 Hare, 1.

¹⁴⁵ *Alexander v. Mills*, L. R. 6 Ch. App. 124.

the general law was settled, but "to ascertain and determine as best it may what the law is, and *to take that to be the law which it has so ascertained and determined.*"¹⁴⁶ This course obviously compelled a buyer to take a title that might not be marketable if another court took a different view upon the disputed point of the general law. It was natural for the courts to reach ultimately a sounder conclusion, which was soon done. The true modern rule was worked out in *In re Thackwray*,¹⁴⁷ that "the court does decide on general matters of law [including the construction of Acts of Parliament] about which there cannot be fairly said to be any judicial doubt." But in order for it to be right for the court to adopt its own view of the law in resolving the doubt "it must appear to the judge who decides it that there are no decisions or *dicta* of weight which show that another judge or another court having the question before it might come to a different conclusion."¹⁴⁸ The American cases follow this later rule of *In re Thackwray*.¹⁴⁹

§ 804. (2) Where the Doubt Arises from an Extrinsic Fact or the Construction of a Document.—As to what facts or questionable documentary constructions render a title unmarketable only an examination of many instances can be of utility, having in mind the test stated above—such defect in title that an ordinary subsequent buyer in the market would be unwilling to accept it at

¹⁴⁶ *Ibid.*, at p. 131.

¹⁴⁷ *In re Thackwray*, L. R. 40 Ch. D. 34, 38.

¹⁴⁸ *Ibid.*

¹⁴⁹ See the excellent opinion in *Lippincott v. Wikoff*, 54 N. J. Eq. 107, 33 Atl. 305, 308, 309, and 310, which reviews the development of the doctrine in the English cases. See, also, *Richards v. Knight*, 64 N. J. Eq. 196, 53 Atl. 452; *Hedderly v. Johnson*, 42 Minn. 443, 18 Am. St. Rep. 521, 44 N. W. 527, 528; *Gill v. Wells*, 59 Md. 492, 495.

full value. For this reason, a number of cases with the particular defect found by the court are collected in the note below.¹⁵⁰

150 In the following cases the title was held to be unmarketable, and for that reason specific performance was refused the vendor: *Potter v. Ogden* (N. J. Ch.), 59 Atl. 673 (vendor's title depended upon a rebuttable presumption of fact, that vendor's husband had not been heard from for over seven years); *Lamprey v. Whitehead*, 64 N. J. Eq. 408, 54 Atl. 803 (vendor's life interest was subject to be divested by death of third person leaving issue); *Meyer v. Madreperla*, 68 N. J. L. 258, 9 Am. St. Rep. 536, 53 Atl. 477 (title depended on fact of death of a sailor who had not been heard from for more than the statutory period of seven years. The title was held good in law, but a question whether equity would force it upon a purchaser); *Methodist Episcopal Church v. Roberson* (N. J. Ch.), 58 Atl. 1056 (doubt of fact whether vendor had capacity as corporation to receive title); *McAllister v. Harmon*, 101 Va. 17, 42 S. E. 920 (dependent upon fact of adverse possession of vendor's grantor); *Richards v. Knight*, 64 N. J. Eq. 196, 53 Atl. 452 (vendor's title depends on construction of clause of will upon which the law is doubtful); *Zane v. Weintz*, 65 N. J. Eq. 214, 55 Atl. 641 (title depended on doubtful clause of will. Court held that the vendor's rights under the will were "so fairly debatable" that it would not force the vendee to accept the title which might be taken from her in a subsequent suit); *Baumeister v. Silver*, 98 Md. 418, 56 Atl. 825 (doubt as to vendor having a right to sue for possession); *Wesley v. Eels*, 177 U. S. 370, 20 Sup. Ct. 661, 44 L. ed. 810 (title finally depended on question whether certain state scrip was valid currency. A former decision of the state court held it invalid. The United States supreme court held this excused defendant from specific performance); *In re Handman and Wilcox's Contract*, [1902] 1 Ch. D. 599 (doubtful question of fact, whether vendor purchased from his grantor without notice of a prior contract). But specific performance was given in the following cases, although there was some doubt as to the title, it not being sufficient to render it unmarketable: *Hayes v. Nourse*, 114 N. Y. 607, 11 Am. St. Rep. 700, 22 N. E. 40 (a *lis pendens*, having no validity, does not make a title doubtful); *Levy v. Iroquois Bldg. Co.*, 80 Md. 300, 30 Atl. 707 (the mere possibility of a subsequent suit to set aside conveyance to vendor on ground of undue influence does not make title doubtful); *Sloan v. Rose*, 101 Va. 151, 43 S. E. 329 (a lien on the land for grading, vendor having paid into court funds to satisfy the lien); *Montgomery v. Pac. Coast Land Bureau*, 94 Cal. 284, 28 Am. St. Rep. 122, 29 Pac. 640 (erroneous advice of learned coun-

sel that title was defective does not protect vendee from specific performance); *Jones v. Rose*, 96 Md. 483, 54 Atl. 69 (an apparent encumbrance of a ground rent had been so provided for as to exonerate the property); *Nicholson v. Condon*, 71 Md. 620, 18 Atl. 812 (valid defense of vendor of being *bona fide* purchaser removes doubt); *Barger v. Gery*, 64 N. J. Eq. 263, 53 Atl. 483 (a possible outstanding interest in a third party arising from an old mortgage assignment, dating back twenty-three years, presumed to offer no reasonable basis of apprehension, as court considers third party would be estopped from asserting his right, if any). For further illustrations, see 4 Pom. Eq. Jur., § 1405.

CHAPTER XXXIX.

SPECIFIC PERFORMANCE: DEFAULT AND DELAY
BY PLAINTIFF.

ANALYSIS.

- § 805. Plaintiff's performance, or offer to perform, a condition of relief.
- § 806. Failure to perform conditions precedent.
- § 807. Default in option to purchase—No relief.
- § 808. Vendor as plaintiff; at what time must he furnish a good title.
- § 809. Tender before suit, when necessary.
- §§ 810-816. Time as affecting the right to a specific performance.
- § 810. Generally not essential.
- § 811. When time is of the essence.
- § 812. Time material.
- § 813. Time not essential when waiver by defendant.
- § 814. What degree of laches will defeat relief.
- § 815. Right after default to name reasonable time for performance.
- § 816. Effect of forfeiture clause in the contract.

§ 805. **Plaintiff's Performance, or Offer to Perform, a Condition of Relief.**—"The doctrine is fundamental that either of the parties seeking a specific performance against the other must show, as a condition precedent to his obtaining the remedy, that he has done or offered to do, or is then ready and willing to do, all the essential and material acts required of him by the agreement at the time of commencing the suit, and also that he is ready and willing to do all such acts as shall be required of him in the specific execution of the contract according to its terms."¹ "In the language often used, he must show himself 'ready, willing, desirous, prompt,

¹ 4 Pom. Eq. Jur., § 1407.

and eager.' There are two *apparent* exceptions, depending upon strictly equitable considerations: 1. A strict performance at the very stipulated *time* is not always essential;² and 2. Partial and immaterial failures of title or defects of the subject-matter, if admitting of compensation, *may* not prevent the vendor from enforcing the remainder of the agreement."³

§ 806. Failure to Perform Conditions Precedent.—In pursuance of this principle equity will not relieve against a failure to perform a condition precedent in a contract, however slight the failure.⁴ The right to specific performance has never vested for the party in default. The contract cannot be said to be of equitable cognizance until the condition is performed. The contractual liabilities are incomplete before that time. Thus, "Equity will not enforce a contract of sale where the price is to be fixed by the parties or by arbitrators to be chosen by the parties; and for the plain reason that the contract sought to be enforced is incomplete in an essential particular."⁵ Of course a waiver of the condition makes the contract operative against the waivor and equity will then treat it as any other contract.

² See *post*, §§ 810, 811, 813, 815.

³ 4 Pom. Eq. Jur., § 1407, note 1; see *post*, chapter XLI, where this exception is treated at length.

⁴ The rule is stated in *Earl of Feversham v. Watson*, Freem. Ch. 35: "What was to be done by the plaintiff was in the nature of a condition precedent, and ought to have been done wholly, before the defendant was obliged to do what was to be done on his part; . . . [and as at law] so neither shall he in equity have an execution of the estate, without doing that which by the agreement of the parties ought first to be done, and the plaintiff ought at his peril to have performed what he was to do in the lifetime of his wife": *Finch v. Underwood*, 2 Ch. D. 310, 314; *Hug v. Van Burkleo*, 58 Mo. 203; *City of Providence v. St. Johns Lodge*, 2 R. I. 46.

⁵ *City of Providence v. St. Johns Lodge*, 2 R. I. 46, 56; *Milnes v. Gery*, 14 Ves. 400, 407; *Blundell v. Brettargh*, 17 Ves. 232, 240.

§ 807. **Default in Option to Purchase—No Relief.**—It has at times been suggested that relief for slight failure where there was substantial compliance should be applied to options to purchase land,⁶ as where the holder of the option was a day late in exercising the option. But it is clear the rule followed generally by equity is the true one,—that there can be no relief against a failure to exercise an option after the day named for its expiration,⁷ for an option is no more than an offer to sell which the offerer is bound to keep open during the time set, but which expires with that time, leaving nothing for equity to operate upon.⁸ The courts very frequently refuse to give specific performance of an option sought to be exercised after the time has expired on the ground of time being of the essence.⁹ Strictly speaking, there is no contract if the election is not made before the expiration of the time, and equity finding no contract to use its discretion upon, cannot be concerned with the element of time, which presupposes an existing contract.

But in *Johnson v. Conger*, 14 Abb. Pr. 95, the court gave specific performance by appointing the arbitrators, the contract not having named the mode of their appointment. In general, and that the value may be fixed by the court where the means designated in the contract are not of its essence, see *ante*, § 758.

⁶ See *Pom. Spec. Perf.*, §§ 373, 387, 388, pointing out the suggestion, but showing it is not the true rule.

⁷ *Gannett v. Albree*, 103 Mass. 372; *Lord Ranelagh v. Melton*, 2 Drew. & S. 278; *Campbell v. London Co.*, 5 Hare, 519, 524; *Waterman v. Banks*, 144 U. S. 394, 12 Sup. Ct. 646, 36 L. ed. 479; *Brooke v. Garrod*, 1 De Gex & J. 62.

⁸ *Waterman v. Banks*, 144 U. S. 394, 403, 12 Sup. Ct. 646, 36 L. ed. 479; *Potts v. Whitehead*, 20 N. J. Eq. 55, 57, 59.

⁹ *Garrison v. Cooke*, 96 Tex. 228, 97 Am. St. Rep. 906, 72 S. W. 54; *Standiford v. Thompson*, 135 Fed. 991; *Woods v. McGraw* (C. C. A.), 127 Fed. 914, 63 C. C. A. 556; *Rickard v. Taylor*, 122 Fed. 931, 59 C. C. A. 455; *Monarch v. Owensboro* (Ky.), 85 S. W. 193. Of course, after the plaintiff, within the time limited, has accepted the defendant's offer, and thus rendered the unilateral engagement a

§ 808. **Vendor as Plaintiff; at What Time He Must Furnish a Good Title.**—It is a familiar application of the principle as to performance by the plaintiff, that the vendor cannot force performance upon the purchaser, unless he is able to give a good title to the subject-matter. Where, however, the vendor gets in the title before the decree, “the doctrine of equity is, when time is not of the essence, a decree will be made against the purchaser, if the seller can make a good title at the time of decree, unless there has been bad faith, or an improper speculation attempted.”¹⁰ The weight of authority supports this rule,¹¹ although there are several jurisdictions which hold that if the plaintiff could not make a good title at the time of the agreement, specific performance will be denied him on the ground of lack of mutuality.¹² These latter cases are inconsistent with the view of the mutuality rule that is best supported by authority and on principle; since at the time of the decree the defendant is not left in any inequitable position.¹³

bilateral one, the performance of the contract thus resulting is governed by the ordinary rules as to time not being of the essence: See *Pom. Spec. Perf.*, § 387.

¹⁰ *Mussleman's Appeal*, 65 Pa. 480, 488.

¹¹ *Jenkins v. Hiles*, 6 Ves. 646, 655; *Wynn v. Morgan*, 7 Ves. 203; *Mortlock v. Buller*, 10 Ves. 291, 315; *Coffin v. Cooper*, 14 Ves. 205; *Langford v. Pitt*, 2 P. Wms. 629; *Pincke v. Curtis*, 4 Bro. C. C. 329, 331; *Murrell v. Goodyear*, 1 De Gex, F. & J. 432; *Hepburn v. Dunlop*, 1 Wheat. 179. 4 L. ed. 65; *Tison v. Smith*, 8 Tex. 147; *Dresel v. Jordan*, 104 Mass. 407, 416 (“It is sufficient for the seller, upon a contract made in good faith, if he is able to make the stipulated title at the time when, by the terms of his agreement, or by the equities of the particular case, he is required to make the conveyance in order to entitle himself to the consideration.”) See, also, *ante*, § 772.

¹² *Norris v. Fox*, 45 Fed. 406; *Luse v. Deitz*, 46 Iowa, 205; *Ten Eyck v. Manning*, 52 N. J. Eq. 47, 27 Atl. 900; *Chilhowie Iron Co. v. Gardiner*, 79 Va. 305.

¹³ See *ante*, § 769.

If the vendee knew that the vendor had no title, or a defective title, at the time of the agreement, he has no ground for refusing to perform so long as the title is made good by the time of the decree.¹⁴ If, however, the vendee had no knowledge of the vendor's inability to convey at the time of the agreement, he may, at his election, repudiate the agreement upon ascertaining the lack of, or defect in, the title.¹⁵ But, should he not then repudiate the agreement, he is bound to perform if the title can be made by the time of the decree, unless there was some concealment¹⁶ or bad faith¹⁷ on the vendor's part in knowingly keeping his defect in title from the vendee when the agreement was made. Any acquiescence of the vendee in the vendor's steps to get in his title prevents his repudiation.¹⁸ Where the vendor has not the legal title, but has a good equitable title, he may have specific performance if he gets in the legal title before the decree,¹⁹ and there would be no ground for repudiation, as he has power to get in the title.²⁰

14 *Brashier v. Gratz*, 6 Wheat. 528, 537, 538, 5 L. ed. 322; *Old Colony R. R. Corp. v. Evans*, 6 Gray, 25, 66 Am. Dec. 394; *Canton Co. v. Baltimore & O. Ry. Co.*, 79 Md. 424, 29 Atl. 821.

15 *Farrer v. Nash*, 35 Beav. 171 ("where a person sells property which he is neither able to convey himself nor has the power to compel a conveyance of it from any other person, the purchaser, as soon as he finds that to be the case, may say, 'I will have nothing to do with it'"); *Brewer v. Broadworth*, 22 Ch. D. 105.

16 *Dalby v. Pullen*, 3 Sim. 29, 39 ("I cannot think this was fair dealing, . . . and the parties have precluded themselves from the benefit of the rule which prevails in this court as to the time allowed to vendors to remove objections to title").

17 *Dresel v. Jordan* (*supra*, note 11), 104 Mass., at p. 416; *Mussleman's Appeal* (*supra*, note 10), 65 Pa., at p. 488.

18 *Canton Co. v. Baltimore & O. Ry. Co.*, 79 Md. 424, 29 Atl. 821-823; *Parr v. Lovegrove*, 4 Drew. 176.

19 *Ley v. Huber*, 3 Watts, 367; *Tiernan v. Roland*, 3 Harr. (15 Pa. St.) 429.

20 *Farrar v. Nash*, 35 Beav. 171.

§ 809. **Tender Before Suit, When Necessary.**—"With respect to the necessity of an actual tender and a demand of performance before suit brought, the American decisions are somewhat conflicting, and different rules seem to prevail in different states."²¹ "In general, the rules of equity concerning the necessity of an *actual* tender are not so stringent as those of the law. The following special rules seem to be settled: 1. An actual tender by the plaintiff is unnecessary when, from the acts of the defendant or from the situation of the property it would be wholly nugatory. Thus if the defendant has openly refused to perform, the plaintiff need not make a tender or demand; it is enough that he is ready and willing, and offers to perform in his pleading.²² Also, if at the time fixed the vendor is unable to convey, by reason of a defect in his title, etc.,²³ unless time was made essential.²⁴ 2. Where the stipulations are mutual and dependent,—that is where the deed is to be delivered upon payment of the price,—an actual tender and demand by one party is necessary to put the other in default, and to cut off *his* right to treat the contract as still subsisting.²⁵ *Time essential:* Where the time of payment by the vendee is made *essential*, and *a fortiori* where, if his payments are not made on the exact day named, the vendor may treat

²¹ 4 Pom. Eq. Jur., § 1407.

²² 4 Pom. Eq. Jur., § 1407, note, citing, among other cases, *Hunter v. Daniel*, 4 Hare, 420, 433; *Mattocks v. Young*, 66 Me. 459, 467; *Crary v. Smith*, 2 N. Y. 60, 65; *Kerr v. Purdy*, 50 Barb. 24; *Maxwell v. Pittenger*, 3 N. J. Eq. 156.

²³ *Karker v. Haverly*, 50 Barb. 79; *Delevan v. Duncan*, 49 N. Y. 485, 487; *Gray v. Dougherty*, 25 Cal. 266, 280. See, also, the last section of the text, and cases cited.

²⁴ *Kimball v. Tooke*, 70 Ill. 553.

²⁵ *Hubbell v. Van Schoening*, 49 N. Y. 326, 331; *Leaird v. Smith*, 44 N. Y. 618; *Van Campen v. Knight*, 63 Barb. 205; *Irvin v. Bleakley*, 67 Pa. St. 24, 28; *Crabtree v. Levings*, 53 Ill. 526; *Melick v. Cross* (N. J. Eq.), 51 Atl. 16, 23.

the contract as at an end, the vendee must make an actual tender of the price and a demand of the deed at a specified time. The same is true of the vendor where the time of conveying is made essential. This is the very meaning of time being of the essence of the contract.²⁶ But the necessity may be waived by conduct of the other party.²⁷ *Time not essential*: Concerning the necessity of actual tender in contracts in which time is not essential, the American decisions are directly conflicting. According to one group of cases, the strict legal rule is enforced. Where the stipulations are mutually dependent, the plaintiff must make an actual tender, and must demand performance before bringing his suit. Some of these cases, however, dispense with the demand, and only require a tender.²⁸ Another group of decisions adopts a rule more in accordance with the principles of equity, viz., that in such contracts an actual tender or demand by the plaintiff prior to the suit is not essential. It is enough that he was ready and willing, and offered, at the time specified, and even that he is ready and willing at the time of bringing the suit, unless his rights have been lost by laches, and that he offers to perform in his pleading. The plaintiff's performance will be provided for in the decree, and his previous neglect will only affect his right to costs.²⁹

²⁶ *Duffy v. O'Donovan*, 46 N. Y. 223; *Gale v. Archer*, 42 Barb. 320; *Kimball v. Tooke*, 70 Ill. 553; and see § 811, *post*.

²⁷ *Kimball v. Tooke*, *supra*; *Tobey v. Foreman*, 79 Ill. 489. See § 813, *post*.

²⁸ *Suits by the vendee*.—*Mather v. Scoles*, 35 Ind. 1; *Klyce v. Brayles*, 37 Miss. 524; *Brock v. Hidy*, 13 Ohio St. 306 (but tender excused by vendor's conduct); *Hall v. Whittier*, 10 R. I. 530.

Suits by the vendor.—*Klyce v. Brayles*, 37 Miss. 524; *Corbas v. Teed*, 69 Ill. 205.

²⁹ *Suits by vendee*.—*Ashurst v. Peck*, 101 Ala. 499, 14 South. 541; *Watson v. White*, 152 Ill. 364, 38 N. E. 902; *Smoot v. Rea*, 19 Md. 398, 410; *Maughlin v. Perry*, 35 Md. 352; *Irvin v. Gregory*, 13 Gray,

This is unquestionably the true *equitable* doctrine."³⁰

§ 810. Time as Affecting the Right to a Specific Performance—Generally not Essential.—“The stipulations concerning time of performance in a contract are regarded by equity either as immaterial, or as essential, or as material. In all ordinary cases of contract, equity does not regard time as of the essence of the agreement. In all ordinary cases of contract for the sale of land, if there is nothing special in its objects, subject-matter, or terms, although a certain period of time is stipulated for its completion, or for the execution of any of its terms, equity treats the provision as formal rather than essential, and permits a party who has suffered the period to elapse to perform such acts after the prescribed date, and to compel a performance by the other party notwithstanding his own delay.”³¹

215; *Morris v. Hoyt*, 11 Mich. 9, 18; *Minneapolis, St. P. & S. S. M. Ry. Co. v. Chisholm*, 55 Minn. 374, 57 N. W. 63; *Worch v. Woodruff*, 61 N. J. Eq. 78, 47 Atl. 725; *Stevenson v. Maxwell*, 2 N. Y. 408, 415; *Bruce v. Tilson*, 25 N. Y. 194, 197, 203; *Wells v. Smith*, 2 Edw. Ch. 78, 7 Paige, 22, 31 Am. Dec. 274; *Freeson v. Bissell*, 63 N. Y. 168, 170; *Seeley v. Howard*, 13 Wis. 336.

Suits by vendor.—*Stevenson v. Maxwell*, *Bruce v. Tilson*, and *Freeson v. Bissell*, *supra*; *Hawk v. Greensweig*, 2 Pa. St. 295; *Winton v. Sherman*, 20 Iowa, 295; *Rutherford v. Haven*, 11 Iowa, 587; *Mullens v. Big Creek etc. Co.* (Tenn. Ch. App.), 35 S. W. 439; *Shelly v. Mikkelson*, 5 N. Dak. 22, 63 N. W. 210.

³⁰ Pom. Eq. Jur., § 1407, note.

³¹ Pom. Eq. Jur. § 1408; *Parker v. Thorold*, 16 Beav. 59; *Seton v. Slade*, 7 Ves. Jr. 265, 271. The same principle is everywhere recognized. Thus, see *Gibson v. Brown*, 214 Ill. 330, 73 N. E. 578; *Cosby v. Honaker* (W. Va.), 50 S. E. 610; *Lowther Oil Co. v. Miller-Sibley Oil Co.*, 53 W. Va. 501, 97 Am. St. Rep. 1027, 44 S. E. 433; *Ellis v. Bryant*, 120 Ga. 890, 48 S. E. 352; *Vance v. Newman* (Ark.), 80 S. W. 574; *Maris v. Masters*, 31 Ind. App. 235, 67 N. E. 699; *Wright-Blodget Co. v. Astoria Co.* (Or.), 77 Pac. 599; *Cramwell v. Clinton Realty Co.* (N. J. Ch.), 58 Atl. 1030; *Cughan v. Larson* (N. D.), 100 N. W. 1088; *Gunaer v. Draper* (Colo.), 79 Pac. 1040;

§ 811. **When Time is of the Essence.**—"Time may be essential. It is so whenever the intention of the parties is clear that the performance of its terms shall be accomplished exactly at the stipulated day. The intention must then govern. A delay cannot be excused. A performance at the time is essential; any default will defeat the right to a specific performance."³² "Time may be made essential by express stipulation. No particular form is necessary, but any clause will have the effect which clearly provides that the contract is to be null, if the fulfillment is not within the prescribed time."³³ "Time may become essential from the subject-matter, or object of the contract; e. g., where the value of the subject-matter *necessarily* fluctuates and changes with the mere lapse of time."³⁴

Hoamer v. Wyoming Ry. etc. Co., 129 Fed. 883, 65 C. C. A. 81, *University of Des Moines v. Polk Co. Trust Co.*, 87 Iowa, 36, 53 N. W. 1080.

32 4 Pom. Eq. Jur., § 1408. See, among many cases, *Zeimatz v. Blake* (Wash.), 80 Pac. 822, 823; *Eaton v. Schneider*, 185 Ill. 508, 57 N. E. 421; *Monarch v. Owensboro City R. R. Co.* (Ky.), 85 S. W. 193; *Woods v. McGraw*, 127 Fed. 914, 63 C. C. A. 556; *Rickard v. Taylor*, 122 Fed. 931, 59 C. C. A. 455; *Standiford v. Thompson*, 135 Fed. 991. These last three cases were cases of options which were not exercised before the specified time expired; as to such cases, see *ante*, § 807.

The court of chancery, for a time, under Lord Thurlow, attempted to set up the rule that time was never of the essence in equity: *Greyson v. Riddle*, cited in 7 Ves. 273; but this doctrine was soon rejected: *Seton v. Slade*, 7 Ves. 265, 271, 273.

33 4 Pom. Eq. Jur., § 1408, note 2; *Seton v. Slade*, 7 Ves. Jr. 265, 271, 273; *Sowles v. Hall*, 62 Vt. 247, 22 Am. St. Rep. 101, 20 Atl. 810; *Bullock v. Adams*, 20 N. J. Eq. 367; *Kentucky Distilleries & W. Co. v. Warwick Co.*, 109 Fed. 280, 48 C. C. A. 368; *Cleary v. Folger*, 84 Cal. 316, 320, 18 Am. St. Rep. 187, 24 Pac. 280; *Hogan v. Kyle*, 7 Wash. 595, 38 Am. St. Rep. 910, 35 Pac. 399; *Raymond v. San Gabriel Val. Water Co.*, 53 Fed. 883, 4 C. C. A. 89; *Ellis v. Bryant*, 120 Ga. 890, 48 S. E. 352.

34 4 Pom. Eq. Jur., § 1408, note 2. By necessary implication from nature of the subject matter; as *Myers v. League*, 62 Fed. 654, 659, 10 C. C. A. 571; nature of the property, as of mines, likely to change

§ 812. **Time Material.**—"Although time is not ordinarily essential, yet it is, as a general rule, material. In order that a default may not defeat a party's remedy, the delay which occasioned it must be explained and accounted for. The doctrine is fundamental that a party seeking the remedy of specific performance, and also the party who desires to maintain an objection founded upon the other's laches, must show himself to have been 'ready, desirous, prompt, and eager.'"³⁵

But in some cases time almost ceases to be material, as where the vendee has paid the purchase-money, or is in possession of the land,³⁶ it is then said that time does not run against him. But if the vendee abandons possession, *laches* may again be set up against him.³⁷

rapidly in value; as in *Taylor v. Longworth*, 14 Pet. 172, 174, 10 L. ed. 405; the situation of the parties in relation to subject-matter; as *King v. Ruckman*, 24 N. J. Eq. 316, 351; the particular object of vendee; as in *Tilley v. Thomas*, L. R. 3 Ch. App. 61; situation of vendor, an ecclesiastical corporation: *Carter v. Dean and Chapter of Ely*, 7 Sim. 211; necessity of immediate enjoyment, instance of a reversionary interest, where a life may drop; as in *Spurier v. Hancock*, 4 Ves. Jr. 662; *Newman v. Rogers*, 4 Bro. C. C. 391, 393; character of property and state of the market: *Ky. Distilleries & W. Co. v. Warwick Co.*, 109 Fed. 280, 48 C. C. A. 368; nature of property,—a lease of mines: *MacBryde v. Weekes*, 22 Beav. 533. See, also, *Schimpf v. Dime Deposit and Discount Bank*, 208 Pa. St. 380, 57 Atl. 767 (corporate stock—it had quadrupled in value when bill filed, three years late). This presumption or implication may be rebutted by other facts showing the intention of the parties to accept substantial and not literal performance as to time: *Hosmer v. Wyoming Ry. & Iron Co.*, 129 Fed. 883, 65 C. C. A. 81.

³⁵ 4 Pom. Eq. Jur., § 1408; *Hubbell v. Von Schoening*, 49 N. Y. 326; *Day v. Cohn*, 65 Cal. 508, 4 Pac. 511; *Gill v. Bradley*, 21 Minn. 15; *Hertford v. Boore*, 5 Ves. Jr. 719. See, generally, on the subject of laches, *ante*, volume I, chapter I.

³⁶ *Mullens v. Big Creek Gap Coal & Iron Co.* (Tenn. Ch. App.), 35 S. W. 439; *Green v. Finin*, 35 Conn. 178; *Stretch v. Schenck*, 23 Ind. 77; *Miller v. Bear*, 3 Paige, 466; *Gilbert v. Sleeper*, 71 Cal. 290, 12 Pac. 172; *Mudgett v. Clay*, 5 Wash. 103, 31 Pac. 424.

³⁷ *Southeastern Co. v. Knott*, 10 Hare, 122, 126.

§ 813. **Time not Essential When Waiver by Defendant.**—If the court finds that although time was of the essence of the contract, yet the defendant has waived his right to insist upon strict performance either expressly or by acquiescence in plaintiff's laches, as where his conduct after the failure to perform on the day indicated that he would accept a delayed performance, a decree for specific performance will be granted the plaintiff as if time had not been of the essence.³⁸

§ 814. **What Degree of Laches Will Defeat Relief.**—Resting upon the doctrine that the court in a suit for specific performance has at all times a discretionary power upon equitable principles either to grant or refuse relief, each case is determined from its own circumstances, as to what delay by the plaintiff is material, or what excuse is insufficient. In general, the plaintiff must not have been grossly negligent,³⁹ the delay must not have been too great,⁴⁰ nor must it have seriously injured defend-

³⁸ *King v. Wilson*, 6 Beav. 124, 126; *Webb v. Hughes*, 10 Eq. Cas. 281; *Raymond v. San Gabriel Val. Water Co.*, 53 Fed. 883, 4 C. C. A. 89; *Thayer v. Wilmington Star Min. Co.*, 105 Ill. 540, 547; *Cughan v. Larson (N. D.)*, 100 N. W. 1088.

³⁹ *Hubbell v. Von Schoening*, 49 N. Y. 326; *Fordyce v. Ford*, 4 Bro. C. C. 494, 498 ("where either party has been guilty of gross negligence, the court will not lend its assistance to the completion of the contract").

⁴⁰ *Hertford v. Boore*, 5 Ves. Jr. 719 (the bill was delayed seven years because of differences between the parties); *Millwood v. Earl Thanet*, cited in 5 Ves. Jr. 720; *Bauer v. Lumaghi Coal Co.*, 209 Ill. 316, 70 N. E. 634 (delay of five years); *Lowther Oil Co. v. Miller-Sibley Oil Co.*, 53 W. Va. 501, 97 Am. St. Rep. 1027, 44 S. E. 433 (delay of nine years); *Forthman v. Deters*, 206 Ill. 159, 99 Am. St. Rep. 145, 69 N. E. 97, 100; *Findley v. Koch (Iowa)*, 101 N. W. 766 (three years of delay); *Block v. Donovan (N. Dak.)*, 99 N. W. 72; *Hatch v. Lucky Bill Min. Co.*, 25 Utah, 405, 71 Pac. 865 (delay of ten years); *Combes v. Scott*, 76 Wis. 662, 45 N. W. 532 (delay of six years).

ant's interests;⁴¹ the conduct or delay of the plaintiff must not indicate an intention to abandon the contract;⁴² and the plaintiff must show a reasonable excuse for the default,⁴³ and show that he came into equity promptly when he was in a position to perform.⁴⁴ The same rule applies whether the plaintiff in default is vendor, failing to convey at the day set by the contract,⁴⁵ or the vendee, failing to complete the payment of the purchase-money at the time agreed upon.⁴⁶ Any

⁴¹ *Taylor v. Longworth*, 14 Pet. 172, 174, 10 L. ed. 405; *Green v. Covillaud*, 10 Cal. 317, 70 Am. Dec. 725; *Pincke v. Curtis*, 4 Bro. C. C. 329, 331; *Farley v. Vaughn*, 11 Cal. 235, 238.

⁴² *Baldwin v. Salter*, 8 Paige Ch. 473, 475.

⁴³ *Brown v. Guarantee Trust Co.*, 128 U. S. 403, 9 Sup. Ct. 127, 32 L. ed. 468; *Hubbell v. Von Schoening*, 49 N. Y. 326.

⁴⁴ *Watts v. Waddle*, 6 Pet. 388, 393, 8 L. ed. 437.

⁴⁵ In the following cases, the delay not being material, the vendor in default was given specific performance, time not being of the essence of the contract: *Pincke v. Curtis*, 4 Bro. C. C. 329, 331 (no damage to vendee and good title could be made in reasonable time); *Hertford v. Boore*, 5 Ves. Jr. 719 (delay of seven months); *Wynn v. Morgan*, 7 Ves. 203, 205; *Pierce v. Nichols*, 1 Paige Ch. 244 (on ground that vendor could compensate vendee for the delay); *Sharp v. Trimmer*, 24 N. J. Eq. 422; *Radcliffe v. Warrington*, 12 Ves. Jr. 326, 333. But the default of the vendor being serious, or without good excuse, specific performance was denied in these cases: *Fordyce v. Ford*, 4 Bro. C. C. 494, 498; *Harrington v. Wheeler*, 4 Ves. Jr. 686 (seven years' delay); *Watson v. Reid*, 1 Russ. & M. 236 (delay of one year after notice of abandonment by vendee); *Lloyd v. Collett*, 4 Bro. C. C. 469 (conduct of vendor evidence of abandonment of contract).

⁴⁶ The vendee in default was given specific performance in the following cases, the delay not being considered material, and time not being of the essence of the contract: *Farley v. Vaughn*, 11 Cal. 235, 238 (several months' delay); *Hearne v. Smart*, 13 Ves. 287 (injunction granted to restrain ejection of vendee two weeks in default); *Edgerton v. Peckham*, 11 Paige Ch. 351, 356, 357; *Richmond v. Robinson*, 12 Mich. 193, 201 (delay in last payment); *Knott v. Stephens*, 5 Or. 235, 241; *Day v. Hunt*, 112 N. Y. 191, 19 N. E. 414; *Brown v. Guarantee Trust Co.*, 128 U. S. 403, 9 Sup. Ct. 127, 32 L. ed. 468; *Hubbell v. Von Schoening*, 49 N. Y. 326 (slight delay); *Barnard v. Lee*, 97 Mass. 92; *Grigg v. Landes*, 21 N. J. Eq. 494, 502,

indication of intention of abandonment of the contract by either party defeats his right to specific performance.⁴⁷ *A fortiori* any active prevention of defendant's performance by plaintiff, or any evidence of bad faith in withholding performance, will always defeat plaintiff's bill for specific performance.⁴⁸ Mere lapse of time may amount to evidence of such an intention,⁴⁹

503 (vendee did not complete certain improvements until after the day set); *Hearne v. Tenant*, 13 Ves. 287; *Bank of Columbia v. Hagner*, 1 Pet. 454, 464, 7 L. ed. 219. But where the vendee's default was serious he was denied relief: *Earl v. Halsey*, 14 N. J. Eq. 332 (no attempt by vendee to perform); *Mackreth v. Marlar*, 1 Cox, 260 (delay of five years); *Marshall v. Perry*, 90 Ill. 289, 294 (delay entirely unexplainable by any equitable circumstance. It was for speculation); *Guest v. Homfray*, 5 Ves. Jr. 820 (vendee had not done all he could to hasten performance); *Green v. Covillaud*, 10 Cal. 317, 70 Am. Dec. 725 (two years' delay without excuse); *McCabe v. Mathews*, 155 U. S. 550, 556, 15 Sup. Ct. 190, 39 L. ed. 257 (delay of nine years, land having increased in value from one hundred and fifty dollars to seven thousand five hundred dollars. A delay for speculative purpose); *Shortall v. Mitchell*, 57 Ill. 161; *Walker v. Jeffreys*, 1 Hare, 341, 349 (delay of two years); *Benedict v. Lynch*, 1 Johns. Ch. 370 (no sufficient excuse for the delay). If time is of the essence, the slightest delay defeats the vendee's right to specific performance: *Spurier v. Hancock*, 4 Ves. Jr. 667 (reversionary interest); *Carter v. Dean and Chapter of Ely*, 7 Sim. 211; *King v. Ruckman*, 24 N. J. Eq. 316, 351; *Tilley v. Thomas*, L. R. 3 Ch. App. 61; *Myer v. League*, 62 Fed. 654, 10 C. C. A. 571; *Bank of Columbia v. Hagner*, 1 Pet. 454, 7 L. ed. 219 (lapse of time indicated abandonment).

⁴⁷ *Bank of Columbia v. Hagner*, 1 Pet. 454, 7 L. ed. 219; *Benedict v. Lynch*, 1 Johns. Ch. 370; *Shortall v. Mitchell*, 57 Ill. 161; *Wadge v. Kittleson* (N. D.), 97 N. W. 856.

⁴⁸ *Connolly v. Haggarty*, 65 N. J. Eq. 596, 56 Atl. 371; *Williamson v. Dils*, 24 Ky. Law Rep. 292, 72 S. W. 292 (vendor threatened to kill plaintiff if he went on the land to make surveys necessary to fix the price); *Engberry v. Rousseau*, 117 Wis. 52, 93 N. W. 824 (bad faith of vendor); *Harris v. Greenleaf*, 25 Ky. Law Rep. 1940, 79 S. W. 267 (must be good faith).

⁴⁹ *Lloyd v. Collett*, 4 Bro. C. C. 469; *Bank of Columbia v. Hagner*, *supra*; *Benedict v. Lynch*, *supra*; *Baldwin v. Salter*, 8 Paige Ch. 473.

unless there is acquiescence in the long delay.⁵⁰ A contract once abandoned by the party in default cannot afterwards be revived.⁵¹

Where the delay of the vendor or vendee in seeking performance is for a speculative purpose, to await until time shall determine whether or not it is to his advantage to have the benefit of the contract, it is held by a considerable group of cases that equity will not aid him by any relief against his failure to perform, whatever the situation otherwise.⁵²

§ 815. **Right After Default to Name Reasonable Time for Performance.**—Where time is not of the essence, the time in which the party in default may have a further right to receive performance may be limited by the party not in default giving reasonable notice that performance must be made by a certain day.⁵³ If a reasonable time after receipt of the notice is thus given the party in default, equity will not enforce specific performance in his behalf after the day named.⁵⁴ But if the time named is not reasonable, equity will not give any regard

⁵⁰ *Benedict v. Lynch, supra.*

⁵¹ *Baldwin v. Salter*, 8 Paige Ch. 473, 475.

⁵² *McCabe v. Matthews*, 155 U. S. 550, 556, 15 Sup. Ct. 190, 39 L. ed. 257; *Marshall v. Perry*, 90 Ill. 289, 294.

⁵³ *Parkin v. Thorold*, 16 Beav. 59; *Macbryde v. Weekes*, 22 Beav. 533; *Webb v. Hughes*, L. R. 10 Eq. 281; *Benson v. Lamb*, 9 Beav. 502, 507 ("notice was lawfully given to the defendant, and the time having expired, the contract is at an end"); *Taylor v. Brown*, 2 Beav. 149; *King v. Wilson*, 6 Beav. 124, 126; *Boldt v. Early* (Ind. App.), 70 N. E. 271. See, also, 4 Pom. Eq. Jur., § 1408, end of note 2, and cases cited.

⁵⁴ The notice being reasonable, equity would not give the defaulting party relief after the expiration of the time in these cases: *Macbryde v. Weekes*, 22 Beav. 533 (notice of one month); *Benson v. Lamb*, 9 Beav. 502, 507; *Walter v. Jeffreys*, 1 Hare, 341, 349 ("if the other party makes no prompt assertion of his right, equity will consider him as acquiescing in the notice"); *Watson v. Reid*, 1 Russ. & M. 236.

to it.⁵⁵ Thus a notice to perform immediately or abandon the contract has no effect,⁵⁶ and a notice of some weeks may be too short if the party in default cannot by reasonable activity be ready to perform in that time.⁵⁷ "Some latitude in respect to time is reasonable, and I think such notice ought to fix the longest time that could be reasonably required for the performance of the acts which remained to be done."⁵⁸

§ 816. **Effect of Forfeiture Clause in the Contract.**—Contracts often contain a clause that if payment is not made at the day, the defaulting vendee shall forfeit all payments previously made and lose his right to the land. The courts of equity, in England and most American jurisdictions, deal with such a forfeiture clause on the principle that equity abhors a forfeiture and will relieve from it.⁵⁹ It will if possible consider the clause

55 Where the notice was considered as being unreasonably short to complete the bargain, the court disregarded the notice and gave specific performance to the party in default: *Parkin v. Thorold*, 16 Beav. 59 (two weeks); *Webb v. Hughes*, L. R. 10 Eq. Cas. 281 ("He is bound not to give immediate notice of abandonment"); *King v. Wilson*, 6 Beav. 124, 126 (a week held to be too short a time); *Taylor v. Brown*, 2 Beav. 149 (immediate notice not effective); *Green v. Levin*, L. R. 13 Ch. D. 589, 599 (three weeks too short a notice); *Crawford v. Toogood*, L. R. 13 Ch. D. 143, 158 (five weeks not reasonable notice); *Vance v. Newman* (Ark.), 80 S. W. 574.

56 *Taylor v. Brown*, 2 Beav. 149.

57 *Crawford v. Toogood*, L. R. 13 Ch. D. 143 (five weeks too short).

58 *Crawford v. Toogood*, L. R. 13 Ch. D. 143, 158.

59 *Harris v. Greenleaf*, 25 Ky. Law Rep. 1940, 79 S. W. 267; *Zeimantz v. Blake* (Wash.), 80 Pac. 822, 823 (holds that vendor must do some affirmative act to create a forfeiture on vendee's default); *Edgerton v. Peckham*, 11 Paige Ch. 351, 356, 357 (the court said it would not enforce the forfeiture clause as time was not of the essence. The vice-chancellor said the forfeiture cases were those where the contract is executory, and that the authorities generally in equity in England and the United States would not allow a forfeiture where the contract was executed in part. A forfeiture in such cases as these, said the vice-chancellor, is "too monstrous a

as a stipulation for security of performance and not as intending a great loss to one party by a slight failure to perform, and will decree a performance against the vendor with compensation for delay by interest on the purchase-money, thus relieving against the forfeiture.⁶⁰

Equity in relieving against a forfeiture in a contract of sale, and thus declining to acknowledge the express terms of a contract, points to the analogy of the mortgage.⁶¹ Here, it says, equity refuses to carry out the contract with forfeiture for breach in performance. It

proposition to be maintained in the nineteenth century.'') The same rule is found in many cases. See, for instance, *Davis v. Thomas*, 1 Russ. & M. 506; *Vernon v. Stephens*, 2 P. Wms. 66; *In re Dagenbaum*, [1873] L. R. 8 Ch. 1022; *Cornwall v. Henson*, [1900] 2 Ch. 298; *Richmond v. Robinson*, 12 Mich. 193, 201; *Barnard v. Lee*, 97 Mass. 92; *Wells v. Smith*, 7 Paige Ch. 22; *Grigg v. Landis*, 21 N. J. Eq. 499, 502, 503; *Cheney v. Libby*, 134 U. S. 68, 19 Sup. Ct. 498, 33 L. ed. 818; *Jones v. Robbins*, 29 Me. 351, 1 Am. Rep. 593; *Richmond v. Robinson*, 12 Mich. 193; *Ewins v. Gordon*, 49 N. H. 444; *Hall v. Delaplaine*, 5 Wis. 206, 68 Am. Dec. 57; *Fergusson v. Talcott*, 7 N. D. 183, 73 N. W. 207. See, further, 1 Pom. Eq. Jur., § 455, on this subject.

60 *Davis v. Thomas*, 1 Russ. & M. 506 ("a court of equity will relieve against the penalty of a forfeiture upon the ground of full compensation by giving interest"). In the case of *In re Dagenbaum*, [1873] L. R. 8 Ch. 1022, time was of the essence, and by forfeiture clause, if the final payment of two thousand pounds was not paid on the day, the buyer was to lose his bargain and forfeit two thousand pounds already paid. The court refused to enforce this forfeiture, and held it to be a penalty, to be relieved from, and decreed that the buyer in default could pay up in full and receive the lands. The court suggested that if it were not a penalty it would be void as *ultra vires*. Also see *Richmond v. Robinson*, 12 Mich. 193, 201; *Barnard v. Lee*, 97 Mass. 92; *Vernon v. Stephens*, 2 P. Wms. 66.

61 *Parkin v. Thorold*, 16 Beav. 59. Here the Master of the Rolls says: "It [the court of chancery] treats the substance of the contract [of mortgage] to be a security for the repayment of money advanced, and that portion of the contract which gives the estate to the mortgagee as mere form. . . . It is on a similar principle that the whole doctrine relating to equities of redemption, as administered by this court is founded."

does not regard the forfeiture clause as of the substance of the contract. Neither will it in a contract for the sale of land. It assumes that the real intention of the parties was to create a security and not a forfeiture, and equity "relieves against any forfeiture or penalty inserted for the purpose of enforcing the contract."

In a few American jurisdictions, on the other hand, it is held, that since the parties have deliberately stipulated for a clause of forfeiture, equity has no power to make a new contract for them, and cannot relieve the party in default however severe the forfeiture may be. Illinois,⁶² Iowa,⁶³ Oregon,⁶⁴ Indiana⁶⁵ and California⁶⁶ are among this minority, which compel the vendee in default to lose his bargain and all his payments previously paid, in strict accordance with the agreement. But California enforces a forfeiture only where time is of the essence of the contract. The New Jersey court will at times enforce the forfeiture.⁶⁷ Forfeiture will

⁶² *Heckard v. Sayre*, 34 Ill. 142, where the court said: "A court of equity has no more right than a court of law to dispense with an express stipulation of the parties in regard to time in contracts of this nature"; *Stow v. Russell*, 36 Ill. 18; *Steele v. Biggs*, 22 Ill. 643 (vendee in default forfeited the half of purchase-money paid); *Eaton v. Schneider*, 185 Ill. 508, 57 N. E. 421.

⁶³ *Prince v. Griffin*, 27 Iowa, 514, 521 (vendee forfeited previous payment of nine hundred dollars by court's refusal to relieve).

⁶⁴ *Snider v. Lehnherr*, 5 Or. 385.

⁶⁵ *Ewing v. Crouse*, 6 Ind. 312 (one hundred dollars out of four thousand dollars).

⁶⁶ *Glock v. Howard Colony Co.*, 123 Cal. 1, 10, 69 Am. St. Rep. 17, 55 Pac. 713, 43 L. R. A. 199. But the California court did not go so far as the most extreme, saying equity should relieve against a forfeiture clause where time was not of the essence, and the clause was one of stipulated penalty. But in the case before it, time being of the essence, it enforced the forfeiture clause. See, also, *Steele v. Branch*, 40 Cal. 1, 11; *Cleary v. Folger*, 84 Cal. 316, 320, 18 Am. St. Rep. 187, 24 Pac. 280.

⁶⁷ In *Grigg v. Landis*, 21 N. J. Eq. 494, 503, the court, though relieving against a forfeiture, said: "But such contracts will be

be enforced generally where the default is intentional and continued. One cannot ask equity to relieve him against his own wrong.⁶⁸

The clause of forfeiture, like other defenses in equity, may be waived by words or conduct.⁶⁹ Thus, where the vendor acquiesces in the *laches* of the vendee he cannot afterward set up his right to assert the forfeiture, having waived such right.⁷⁰ Such waiver is of importance only in those jurisdictions which usually refuse to relieve against the forfeiture.

enforced unless it can be shown that thereby some hardship or wrong not within the presumed contemplation of the parties at the time will result.''

⁶⁸ *Howe v. Smith*, L. R. 27 Ch. D. 89, 98.

⁶⁹ *Coughran v. Bigelow*, 164 U. S. 301, 310, 17 Sup. Ct. 117, 41 L. ed. 443; *Eaton v. Schneider*, 185 Ill. 508, 57 N. E. 421. In *Zeimantz v. Blake* (Wash.), 80 Pac. 822, 823, it was held that the vendor must do some affirmative act to create a forfeiture on vendee's default.

⁷⁰ *Thayer v. Star Min. Co.*, 105 Ill. 540, 547.

CHAPTER XL.

SPECIFIC PERFORMANCE OF PAROL CONTRACTS,
PART PERFORMED.

ANALYSIS.

- § 817. Rationale of the doctrine.
- § 818. Doctrine does not apply at law.
- § 819. Possession, alone, sufficient.
- § 820. What possession not sufficient.
- § 821. Possession coupled with payment or improvements.
- § 822. Suit by vendor.
- § 823. Modifications and rejection of the doctrine.
- § 824. Payment not sufficient.
- § 825. Conveyance by plaintiff not sufficient.
- § 826. Whether personal services are a sufficient act of part performance.
- § 827. Miscellaneous acts of part performance.
- § 828. Oral promise to give.
- § 829. Marriage not part performance.
- § 830. Specific performance because of fraud, independent of the doctrine of part performance.

§ 817. Rationale of the Doctrine.—“The doctrine was settled at an early day in England, and has been fully adopted in nearly all the American states, that a verbal contract for the sale or leasing of land, or for a settlement made upon consideration of marriage, if part performed by the party seeking the remedy, may be specifically enforced by courts of equity, notwithstanding the statute of frauds.”¹ “The contract must possess all the elements and features necessary to the specific enforcement of any agreement, except the written memorandum required by the statutes.”² Two theories are in vogue, by which this doctrine is sought

¹ 4 Pom. Eq. Jur., § 1409.

² 4 Pom. Eq. Jur., § 1409, note 1.

to be supported; the first of these can, perhaps, be best explained by means of a summary of a judgment in a leading English case,³ in which it was most fully and ably, if not convincingly, expounded.

It is established, both in law and equity, that the fourth section of the statute of frauds does not avoid parol contracts, but establishes a rule of evidence. "From the law thus stated the equitable consequences of the part performance of a parol contract concerning land seem to me naturally to result. In a suit founded on such part performance, the defendant is really 'charged' upon the equities resulting from the acts done in execution of the contract, and not (within the meaning of the statute) upon the contract itself. . . . When the statute says that no action is to be brought to charge any person upon a contract concerning land, it has in view the simple case in which he is charged upon the contract only and not that in which there are equities resulting from *res gestae* subsequent to and arising out of the contract. So long as the connection of those *res gestae* with the alleged contract does not depend upon mere parol testimony, but is reasonably to be inferred from the *res gestae* themselves, justice seems to require some such limitation of the scope of the statute." Where, for example, the vendee has entered into possession, parol evidence of the contract is necessary to explain and excuse that possession; but the vendor is "charged," not upon the contract, but upon the equity arising from the receipt and delivery of the possession. "The doctrine, however, so established has been confined by judges of the greatest authority within limits intended to prevent a recurrence of the mischief which the statute was passed to suppress." "It is in

³ *Maddison v. Alderson*, [1883] L. R. 8 App. Cas. (H. of L.) 467, by Earl of Selborne, L. C.; reviewing the prior cases.

Equitable Remedies, Vol. II—85

general of the essence of such an act [viz., an act of part performance], that the courts shall by reason of the act itself, without knowing whether there was an agreement or not, find the parties unequivocally in a position different from that which, according to their legal rights, they would be in if there were no contract. . . . But an act which though in truth done in pursuance of a contract, admits of explanation without supposing a contract, is not in general admitted to constitute an act of part performance taking the case out of the statute of frauds; as, for example, the payment of a sum of money alleged to be purchase money." "The payment of a sum of money is an equivocal act, not (in itself) until the connection is established by parol testimony, indicative of a contract concerning land." Similarly, continuance in possession by a lessee after the end of his term is not in itself evidence of an agreement to renew the lease, since the act may point to a tenancy at will equally as well as to an express agreement.

Such being the theory of part performance, consistent with and explaining all of the adjudged English and a majority of the American decisions, it is confessedly artificial; *dicta* in many of the English, and in nearly all the American, cases, place the doctrine, wholly or in part, on a broader ground. "The ground is equitable fraud; not an antecedent fraud in entering into the contract, but a fraud inhering in the consequence of setting up the statute as a defense. If the defendant knowingly permits the plaintiff to do acts in part performance of the verbal agreement, acts done in reliance on the agreement, which change the relations of the parties and prevent a restoration to their former condition, it would be a virtual fraud for the defendant to interpose the statute as a defense, and thus to secure for

himself the benefit of the acts of part performance, while the plaintiff would be left not only without adequate remedy at law, but also liable for damages as a trespasser."⁴ Payment in money is not a part performance, because the remedy at law is adequate for its recovery; there has been no irrevocable change of position. Payment in services, on the other hand, at least in services of such a character as not to permit a pecuniary estimate of their value, is an act of part performance; this result logically flows from the theory in question, and in this respect only, in most of the jurisdictions, do the two theories of part performance differ in their practical results. Delivery and receipt of possession under the contract is deemed an irrevocable change of position which it would be a fraud on the vendor's part to disturb; in several jurisdictions, however, this reason, as applied to mere possession, is rejected as artificial and untrue to fact.⁵

§ 818. *Doctrine does not Apply at Law.*—The doctrine of part performance is purely a creation of equity and is not recognized at law. Hence it follows that no distinctively legal action can be maintained upon an oral contract within the statute of frauds.⁶ When the vendor disposes of the property to a *bona fide* purchaser for value, without notice, the vendee may maintain a bill in equity to recover damages from the vendor.⁷ The

⁴ 4 Pom. Eq. Jur., § 1409, note.

⁵ See *post*, § 823.

⁶ O'Herlihy v. Hedges, 1 Schoales & L. 123; Leavitt v. Stern, 150 Ill. 526, 42 N. E. 869 (not a defense to a legal action); Chicago Attachment Co. v. Davis S. M. Co., 142 Ill. 171, 31 N. E. 438, 15 L. R. A. 754; Bartlett v. Bartlett, 103 Mich. 293, 61 N. W. 500 (same); Nally v. Reading, 107 Mo. 350, 17 S. W. 978; Brown v. Pollard, 89 Va. 696, 17 S. E. 6.

⁷ Jervis v. Smith, Hoff. Ch. 470. See, also, Townsend v. Vanderwerker, 160 U. S. 171, 16 Sup. Ct. 258, 40 L. ed. 383.

jurisdiction rests upon the ground that equity alone can grant relief.

§ 819. **Possession, Alone, Sufficient.**—The mere delivery and taking of possession in pursuance of the agreement is, by the weight of authority, sufficient part performance to warrant equity in granting relief.⁸ This is rested upon the ground that “the acknowledged possession of a stranger on the land of another is not explicable, except on the supposition of an agreement, and has, therefore, constantly been received as evidence of an antecedent contract, and as sufficient to authorize an inquiry into its terms; the court regarding what has been done as a consequence of contract or tenure.”⁹ The possession must be actual, notorious and exclusive,¹⁰ and must be taken with the consent or acquiescence of the vendor.¹¹ Because of the requirement of

⁸ *Butcher v. Stapely*, 1 Vern. 363; *Clinan v. Cooke*, 2 Schoales & L. 22, 41 (*dictum*); *Cooper v. Newton*, 68 Ark. 150, 56 S. W. 867; *Calanchini v. Branstetter*, 84 Cal. 249, 24 Pac. 149; *Green v. Finin*, 35 Conn. 178; *Eaton v. Whitaker*, 18 Conn. 222, 44 Am. Dec. 586; *Alderman v. Christie*, 34 Ga. 152; *Puterbaugh v. Puterbaugh*, 131 Ind. 289, 30 N. E. 519, 15 L. R. A. 341; *Pugh v. Spicknall*, 43 Or. 489, 73 Pac. 1020; *Gallagher v. Gallagher*, 31 W. Va. 9, 5 S. E. 297; *Cutler v. Babcock*, 81 Wis. 195, 29 Am. St. Rep. 882, 51 N. W. 420. See, also, *Andrew v. Babcock*, 63 Conn. 109, 26 Atl. 715. Of course, possession not taken in pursuance of the contract is insufficient: *Waymire v. Waymire*, 141 Ind. 164, 40 N. E. 523; *Hartshorn v. Smart*, 67 Kan. 543, 73 Pac. 73 (possession taken in pursuance of tax deed).

⁹ *Morphett v. Jones*, 1 Swanst. 172. See *Miller v. Lorentz*, 39 W. Va. 160, 19 S. E. 391, for a statement of the effect of the ancient common-law doctrine of livery of seisin as an historical ground for the rule that mere possession is sufficient.

¹⁰ *Cooley v. Lobdell*, 153 N. Y. 596, 47 N. E. 783; *Gallagher v. Gallagher*, 31 W. Va. 9, 5 S. E. 297; *Miller v. Lorentz*, 39 W. Va. 160, 19 S. E. 391; *Woods v. Stevenson*, 43 W. Va. 149, 27 S. E. 309.

¹¹ *Purcell v. Miner*, 4 Wall. 513, 18 L. ed. 435 (this requirement not satisfied by proof of a scrambling and litigious possession); *Nibert v. Baghurst*, 47 N. J. Eq. 201, 20 Atl. 252; *Lord v. Under-*

exclusive possession, it follows that one tenant in common cannot claim a right to specific performance against his co-tenant by reason of his possession.¹² Such possession is explicable upon the supposition of a continuance of the co-tenancy. Where a contract provides for the sale of several distinct lots for one price, probably possession of one lot is sufficient to warrant relief as to all;¹³ but this principle cannot apply, of course, when the lots are sold under separate agreements.¹⁴ It is to be noted that possession must be taken in pursuance of contract.¹⁵ Therefore, possession taken prior to the contract or possession preparatory to the contract is not sufficient.¹⁶

§ 820. What Possession not Sufficient.—As possession must be taken in pursuance of a contract, a mere holding over by a tenant after the expiration of his lease is not sufficient part performance to take the case out of the statute.¹⁷ Where, however, there is a change in the

dunk, 1 Sandf. Ch. 46 (it must clearly appear to have been taken with the known permission of the vendor). To the effect that vendor's acquiescence in the possession is sufficient, see Gregory v. Mighell, 18 Ves. 328. The general *rationale* of the doctrine that possession is part performance, is, that the vendee, unless permitted to introduce parol evidence, will be liable as a trespasser. Manifestly one who is in fact a trespasser is not entitled to come within its operation.

¹² Workman v. Guthrie, 29 Pa. St. 495, 72 Am. Dec. 654. See, also, Roberts v. Templeton (Or.), 80 Pac. 481.

¹³ Smith v. Underdunk, 1 Sandf. Ch. 579; Jones v. Pease, 21 Wis. 644. In these cases, however, there were other acts of part performance in addition to possession of part of the property.

¹⁴ Buckmaster v. Harrop, 7 Ves. 341.

¹⁵ See cases cited in preceding notes.

¹⁶ For examples of acts of preparation held insufficient, see Clerk v. Wright, 1 Atk. 12; Nibert v. Baghurst, 47 N. J. Eq. 201, 20 Atl. 252. See, to the effect that mere continued possession of tenant is not sufficient, cases cited in note to § 820.

¹⁷ Smith v. Turner, Prec. Ch. 561; Wills v. Stradling, 3 Ves. 378; Maddison v. Alderson, L. R. 8 App. Cas. 295 (*dictum*); Harman v.

terms of the tenancy, as, for instance, in the amount of rent paid, or where the tenant makes substantial repairs or improvements, such circumstance in connection with the possession is sufficient to warrant relief.¹⁸ Possession obtained wrongfully is, of course, no ground for relief, for it does not refer to any contract whatever.¹⁹

§ 821. Possession Coupled with Payment or Improvements. While the weight of authority undoubtedly supports the view that possession alone is sufficient to take a case out of the operation of the statute of frauds, it will be found that in a large majority of the cases other circumstances have been present. Under the theory of the English courts, these additional circumstances are immaterial; but under the theory that there must be an irrevocable change of position, prevailing in a few of the American states, such circumstances are necessary. Even in states where possession alone is sufficient, however, it is frequently stated that possession coupled with payment of the whole or a part of the purchase price

Harman, 70 Fed. 894, 935, 17 C. C. A. 479; Koch v. National Union B. & L. Assn., 137 Ill. 497, 27 N. E. 530. See, also, Green v. Groves, 109 Ind. 519, 10 N. E. 401; Winslow v. Baltimore & O. R. Co., 188 U. S. 646, 23 Sup. Ct. 443, 47 L. ed. 635; Emmel v. Hayes, 102 Mo 186, 22 Am. St. Rep. 769, 14 S. W. 209, 11 L. R. A. 323. Neither is a possession begun as former owner sufficient: Swales v. Jackson, 126 Ind. 282, 26 N. E. 62.

¹⁸ *Increased rent*.—Wills v. Stradling, 3 Ves. 378; Nunn v. Fabian, L. R. 1 Ch. 35.

Repairs and improvements.—Mundy v. Jolliffe, 5 Mylne & C. 167; Morrison v. Herrick, 130 Ill. 631, 20 N. E. 537; Rhea v. Jordan, 28 Gratt. 678 (co-tenants). See, also, Wills v. Stradling, 3 Ves. 378. But see Frame v. Dawson, 14 Ves. 386. In Allen v. Bemis, 120 Iowa, 172, 94 N. W. 560, it was held that mere making improvements is not sufficient to warrant the court in enforcing a contract of sale in favor of the tenant.

¹⁹ Cole v. White, 1 Bro. C. C. 409; Purcell v. Miner, 4 Wall. 513, 18 L. ed. 435; Lord v. Underdunk, 1 Sandf. Ch. 40. See, also, note 11, *supra*.

will remove the case from the operation of the statute; and this is the rule in most of the other states as well.²⁰ It is also stated quite generally that possession coupled with the making of valuable improvements is sufficient part performance.²¹ It is to be noted that in the states

20 In the following cases possession coupled with payment of the whole or a part of the purchase price was held sufficient: *Merrell v. Witherby*, 120 Ala. 418, 74 Am. St. Rep. 39, 20 South. 994, 26 South. 974; *Holmes v. Holmes*, 44 Ill. 168; *Ferbrache v. Ferbrache*, 110 Ill. 210; *Pond v. Sheean*, 132 Ill. 312, 23 N. E. 1018, 8 L. R. A. 414; *Wright v. Raftree*, 181 Ill. 464, 54 N. E. 998; *Green v. Jones*, 76 Me. 563; *Adair v. Adair*, 78 Mo. 630; *Dunckel v. Dunckel*, 141 N. Y. 427, 36 N. E. 405; *Peay v. Seigler*, 48 S. C. 496, 59 Am. St. Rep. 731, 26 S. E. 885; *Stark v. Wilder*, 36 Vt. 752; *Holmes v. Caden*, 57 Vt. 111; *Neel v. Neel*, 80 Va. 584; *Lee v. Wrixon* (Wash.), 79 Pac. 489; *O'Connor v. Jackson*, 33 Wash. 219, 74 Pac. 372; *Frede v. Pflugradt*, 85 Wis. 119, 55 N. W. 159.

21 In the following cases possession coupled with the making of improvements was held sufficient: *Moulton v. Harris*, 94 Cal. 420, 29 Pac. 706; *Morrison v. Herrick*, 130 Ill. 631, 22 N. E. 537; *Cobban v. Hecklen*, 27 Mont. 245, 70 Pac. 805; *Pugh v. Spicknall*, 43 Or. 489, 73 Pac. 1020, 74 Pac. 485; *Piatt v. Seif*, 207 Pa. St. 614, 57 Atl. 68; *Peery v. Elliott*, 100 Va. 264, 40 S. E. 919. See, also, for statements of the rule, *Bartlett v. Bartlett*, 103 Mich. 293, 61 N. W. 500; *Cooper v. Thomason*, 30 Or. 161, 45 Pac. 296; *McKay v. Calderwood* (Wash.), 79 Pac. 629.

As to the nature of the improvements, see *Gallagher v. Gallagher*, 31 W. Va. 9, 5 S. E. 297, where the court, per Snyder, J., said: "But the improvements relied upon must be of a character permanently beneficial to the land, and involving a sacrifice to the purchaser who made them. Although the improvements are required to be beneficial to the land, a court of equity will not inquire whether the improvements have been judiciously or injudiciously made, or whether the money has been well or ill laid out. It must appear, however, that the loss of his improvements would be a sacrifice to the purchaser. If, therefore, he had gained more by the possession and use of the land than he had lost by his improvements, or if he has been in fact fully compensated for the improvements, they will not be available to him as a ground for specific execution." Where the contract cannot be specifically enforced, compensation may be made for improvements, deducting rents and profits: *Schneider v. Reed* (Wis.), 101 N. W. 682. Possession coupled with both the making of improvements and the payment

insisting upon additional circumstances, neither payment nor the making of improvements in addition is necessarily sufficient, for even in such cases there may be no irrevocable change of position.²² This distinction, however, is frequently overlooked by the courts.

§ 822. *Suit by Vendor.*—The doctrine of part performance is applicable not only to suits by a vendee, but has been applied to suits by a vendor as well. We have seen that a vendor is entitled to specific performance in many instances where his only claim is for money—the purchase price. It has been said that delivery of possession by the vendor and acceptance thereof by the vendee will be sufficient part performance to entitle a vendor to sue;²³ and the case is still clearer when possession is accompanied by other acts.²⁴

§ 823. *Modifications and Rejection of the Doctrine.*—The rule that delivery and acceptance of possession alone are sufficient to take a case out of the statute is not

of part of the purchase price is, of course, sufficient: *Day v. Cohn*, 65 Cal. 508, 4 Pac. 511; *Cutsinger v. Ballard*, 115 Ind. 93, 17 N. E. 206; *Miller v. Ball*, 64 N. Y. 286; *Bowman v. Wolford*, 80 Va. 213; *Borrow v. Borrow*, 34 Wash. 684, 76 Pac. 305; *Ratliff v. Sommers* (W. Va.), 46 S. E. 712; *Butler v. Thompson*, 45 W. Va. 660, 72 Am. St. Rep. 838, 31 S. E. 960.

²² See cases cited in previous notes, and under § 823.

²³ “Possession . . . is an act of part performance as to both parties to the agreement, in that the owner has allowed the other party to do an act on the faith of the contract, namely, to take and hold possession of the land, which would otherwise be wrongful, and would render him a trespasser, and he, on his part, has withdrawn from the land, and acquiesced in the possession of the other party as rightful”: *Cutler v. Babcock*, 81 Wis. 195, 29 Am. St. Rep. 882, 51 N. W. 420. See, also, *Andrew v. Babcock*, 63 Conn. 109, 26 Atl. 715.

²⁴ *Andrew v. Babcock*, 63 Conn. 109, 26 Atl. 715; *Tatum v. Brooker*, 51 Mo. 148; *Bowers v. Cator*, 4 Ves. 91. In *Cooper v. Thomason*, 30 Or. 161, 45 Pac. 296, relief was given on the ground that the remedy must be mutual.

accepted by all the states. In Massachusetts and Texas, fraud is the *rationale* of the remedy; and consequently it is held that the acts must be such that adequate compensation cannot be made except by a conveyance, so that it would be fraudulent for the vendor to refuse to execute a deed.²⁵ It is clear that mere possession does not answer this requirement; and even possession coupled with payment or the making of improvements does not necessarily suffice. In Illinois, and now as a result of statute in Alabama, relief will not be given unless possession is coupled with payment of the whole or a portion of the purchase price.²⁶ In Kentucky, Mississippi, North Carolina, and Tennessee, the whole

²⁵ Burns v. Daggett, 141 Mass. 368, 6 N. E. 727; Low v. Low, 173 Mass. 580, 54 N. E. 257 (relief granted); Bradley v. Owsley, 74 Tex. 69, 11 S. W. 1052; Weatherford, M. W. & N. W. Ry. Co. v. Wood, 88 Tex. 191, 30 S. W. 859, 28 L. R. A. 526 (*dictum*). This is probably the rule in Washington, also: Johnson v. Upper (Wash.), 80 Pac. 801. In West v. Webster (Tex. Civ. App.), 87 S. W. 196, it is said that "possession and the making of permanent and valuable improvements are required." In Pennsylvania it is said that the evidence "must show performance or part performance by the vendee which could not be compensated in damages, and such as would make rescission inequitable and unjust": Hart v. Carroll, 85 Pa. St. 508; Sample v. Horlacher, 177 Pa. St. 247, 35 Atl. 615.

²⁶ It is held in Illinois that a case may be taken out of the statute "by a payment of the purchase money, being let into possession, and the making of lasting and valuable improvements. . . . While the cases may not all go to the length of requiring all of these acts to constitute such a part performance of the contract as to require a decree for the specific execution of the contract, still we are aware of no well-considered case which has dispensed with the payment of the purchase money": Holmes v. Holmes, 44 Ill. 168. See, also, Ferbrache v. Ferbrache, 110 Ill. 210; Pond v. Sheean, 132 Ill. 312, 23 N. E. 1018, 8 L. R. A. 414; Wright v. Raftree, 181 Ill. 464, 54 N. E. 998. As to the statutory rule in Alabama, see Nelson v. Shelby Mfg. & Imp. Co., 96 Ala. 515, 38 Am. St. Rep. 116, 11 South. 695.

There is a *dictum* in New York to the effect that mere possession, without any other circumstance of hardship or fraud, is not sufficient: Miller v. Ball, 64 N. Y. 286. For a *dictum* to the effect that

doctrine of part performance has been rejected;²⁷ but in several of these states, in order to prevent too great an injustice, a party who goes into possession and makes improvements upon faith of an oral contract is allowed a lien for the value of such improvements.²⁸

§ 824. **Payment not Sufficient.**—It is the generally accepted doctrine that payment of the whole or a part of the purchase price is not sufficient in itself to take a case out of the operation of the statute of frauds.²⁹

possession alone is sufficient, see *Harris v. Knickerbacker*, 5 Wend. 638. It is believed that in all cases in which relief has been granted in this state, additional facts have been present.

²⁷ *Bullitt v. Eastern Kentucky Land Co.*, 99 Ky. 324, 36 S. W. 16; *Doty's Admrs. v. Doty's Guardian*, 26 Ky. Law Rep. 63, 80 S. W. 803; *McGuire v. Stevens*, 42 Miss. 724, 2 Am. Rep. 649; *Washington v. Soria*, 73 Miss. 665, 55 Am. St. Rep. 555, 19 South. 485; *Albea v. Griffin*, 2 Dev. & B. Eq. 9; *Barnes v. Teague*, 1 Jones Eq. 277, 62 Am. Dec. 200; *Gulley v. Macy*, 84 N. C. 434; *Patton v. McClure*, Mart. & Y. 333.

²⁸ *Bullitt v. Eastern Kentucky Land Co.*, 99 Ky. 324, 36 S. W. 16; *Albea v. Griffin*, 2 Dev. & B. Eq. 9; *Luton v. Badham*, 127 N. C. 96, 80 Am. St. Rep. 783, 37 S. E. 143, 53 L. R. A. 337. In *Ridley v. McNairy*, 2 Humph. 174, it is held that the owner can set off the value of the rents and profits against the claim for improvements.

²⁹ *Clinan v. Cooke*, 1 Schoales & L. 22; *Maddison v. Alderson*, L. R. 8 App. Cas. 467; *Lord Pengall v. Ross*, 2 Eq. Abr. 46; *Townsend v. Vanderwerker*, 160 U. S. 171, 16 Sup. Ct. 258, 40 L. ed. 383; *Duff v. Hopkins*, 33 Fed. 599, 607 (because it admits of direct compensation); *Thompson v. New South Coal Co.*, 135 Ala. 630, 93 Am. St. Rep. 49, 34 South. 31; *Forrester v. Flores*, 64 Cal. 24, 28 Pac. 107; *Neal v. Gregory*, 19 Fla. 356; *Koenig v. Dohm*, 209 Ill. 468, 70 N. E. 1061; *Riley v. Haworth*, 30 Ind. App. 377, 64 N. E. 928; *Guthrie v. Anderson*, 47 Kan. 383, 28 Pac. 164; *Ross v. Cook* (Kan.), 80 Pac. 38; *Washington Brewery Co. v. Carry* (Md.), 24 Atl. 151; *Boulder Val. Ditch Min. & M. Co. v. Farnham*, 12 Mont. 1, 29 Pac. 277; *Peters v. Dickinson*, 67 N. H. 389, 32 Atl. 154; *Nibert v. Baghurst*, 47 N. J. Eq. 201, 20 Atl. 252; *Charlton v. Columbia R. E. Co.*, 64 N. J. Eq. 631, 54 Atl. 444; *Russell v. Briggs*, 165 N. Y. 500, 59 N. E. 303, 53 L. R. A. 556; *Miller v. Ball*, 64 N. Y. 286; *Cooper v. Thomson*, 30 Or. 161, 45 Pac. 296; *Gallagher v. Gallagher*, 31 W. Va. 9, 5 S. E. 297; *Harney v. Burhans*, 91 Wis. 348, 64 N. W. 1031.

Several reasons are given by the courts for this rule. In the first place, it is said that only evidence which a party might use in defense to an action of trespass is admissible to show part performance, and that payment does not come within this principle. In the second place, it is said that in another clause of the statute, with respect to goods, it is provided that payment shall operate to take the case out of the statute; "and the courts have therefore considered this as excluding agreements for lands, because it is to be inferred, that when the legislature said it should bind in the case of goods, and were silent as to the case of lands, they meant that it should not bind in the case of lands." Again, "payment of money is not part performance, for it may be repaid; and then the parties will be just as they were before, especially if repaid with interest."³⁰ Insolvency of the vendor and his consequent inability to respond in damages do not alter the rule;³¹ and it is im-

Possession taken as part payment, however, may be sufficient: *Puterbaugh v. Puterbaugh*, 131 Ind. 289, 30 N. E. 519, 15 L. R. A. 341. Early English cases *contra* have been overruled. Such are *Owen v. Davies*, 1 Ves. Sr. 82, 83; *Main v. Melbourne*, 4 Ves. 720 (payment of substantial part of consideration will take case out of statute, but payment of small part will not). In Delaware, it is said that since the statute in that state makes no exception in regard to part payment for goods, one strong reason for the rule fails. Accordingly, it is held that "wherever non-performance on the part of the vendor after receiving the purchase-money, or a part thereof, would put the party into a situation that it is a fraud upon him, unless the agreement is performed, the court upon the principle of preventing fraud should decree a specific performance": *Houston v. Townsend*, 1 Del. Ch. 416, 12 Am. Dec. 109. In Iowa, payment is sufficient part performance by virtue of statute: *Pressley v. Roe*, 83 Iowa, 545, 50 N. W. 44; *Daily v. Minnick*, 117 Iowa, 563, 91 N. W. 913, 60 L. R. A. 840.

³⁰ These three reasons are well stated in *Clinan v. Cooke*, 1 Schoales & L. 22. See, also, *ante*, § 817.

³¹ *Townsend v. Fenton*, 32 Minn. 482, 21 N. W. 726; *McKee v. Phillips*, 9 Watts, 85; *Bradley v. Owsley* (Tex.), 19 S. W. 340. ("The insolvency of the vendor or of his estate is but an unfortun-

material whether such insolvency existed at the date of the contract, or occurred subsequently.³²

§ 825. Conveyance by Plaintiff not Sufficient.—A conveyance by a plaintiff in pursuance of an agreement for an exchange of lands is not sufficient part performance to warrant the court in granting equitable relief.³³ While such a conveyance is referable to a contract, it is not necessarily referable to a contract for the land sought to be recovered. Part performance which takes a case out of the operation of the statute must be done or allowed by the party sought to be charged. Where, however, there is in addition an act of part performance upon the part of the defendant, as by taking possession of the property conveyed, the plaintiff may have specific performance.³⁴ This rests upon the same principle as that which authorizes such relief in favor of a vendor. Where the plaintiff has made a conveyance he is not remediless, for he may maintain an action at law for the value of the property.³⁵

§ 826. Whether Personal Services are a Sufficient Act of Part Performance.—Where the consideration is paid, not in the form of money, but in the form of personal ser-

ate condition; not a fraud upon the vendee, although it may affect him detrimentally.”)

³² *Townsend v. Fenton*, 32 Minn. 482, 21 N. W. 726.

³³ *Smith v. Hatch*, 46 N. H. 146 (*dictum*). See, also, *Peabody v. Fellows*, 177 Mass. 290, 58 N. E. 1019; *Worth v. Patton*, 5 Ind. App. 272, 31 N. E. 1130. See, however, *dictum* in *Swain v. Burnette*, 89 Cal. 564, 26 Pac. 1093.

³⁴ *Bigelow v. Armes*, 108 U. S. 10, 1 Sup. Ct. 83, 27 L. ed. 631; *Riggles v. Erney*, 154 U. S. 244, 14 Sup. Ct. 1083, 38 L. ed. 976; *Union Pac. Ry. v. McAlpine*, 129 U. S. 309, 9 Sup. Ct. 286, 32 L. ed. 673. See, also, *Baldwin v. Sherwood*, 117 Ga. 827, 45 S. E. 216.

³⁵ *Worth v. Patton*, 5 Ind. App. 272, 31 N. E. 1130; *Peabody v. Fellows*, 177 Mass. 290, 58 N. E. 1019; *Root v. Burt*, 118 Mass. 521; *Henning v. Miller*, 83 Hun, 403, 31 N. Y. Supp. 878.

vices of a character such that they do not readily admit of a pecuniary estimate or recompense, shall this be considered an act of part performance? On this question the American jurisdictions are very evenly divided; the answer must depend on the theory which is adopted as the basis of the whole doctrine. On the first theory stated in a former paragraph, payment in services no more points to a contract concerning specific land than does payment in money; in fact, in the ordinary case,—domestic services by a relative or by an adopted child,—the fact of the services rendered gives rise to no inference of any contract whatever.³⁶ On the other hand, if equitable fraud be taken as the basis of the doctrine, and the impossibility of restoring the complainant to the situation in which he was before the contract was made, the rendering of services, for a long term of years, the value of which cannot be estimated by any pecuniary standard, must be considered an act of part performance of the highest character; the fraud upon the complainant is often greater than that resulting from either the taking of possession or the making of improvements.³⁷ The promise, in these cases, has

³⁶ *Maddison v. Alderson*, L. R. 8 App. Cas. (H. of L.) 467; *Grant v. Grant*, 63 Conn. 530, 38 Am. St. Rep. 379, 29 Atl. 15 (practically an oral agreement to adopt plaintiff); *Pond v. Sheean*, 132 Ill. 312, 23 N. E. 1018, 8 L. R. A. 414 (adoption of child); *Dicken v. McKinley*, 163 Ill. 318, 54 Am. St. Rep. 471, 45 N. E. 134 (adoption); *Wallace v. Long*, 105 Ind. 522, 55 Am. Rep. 222, 5 N. E. 666 (adoption); *Austin v. Davis*, 128 Ind. 472, 475, 25 Am. St. Rep. 456, 26 N. E. 890, 12 L. R. A. 120 (adoption); *Renz v. Drury*, 57 Kan. 84, 45 Pac. 71 (adoption; value of services may be recovered on a *quantum meruit*); *Baldwin v. Squier*, 31 Kan. 283, 1 Pac. 591 (same); *Ham v. Goodrich*, 33 N. H. 32; *Devinney v. Corey*, 52 Hun, 612, 5 N. Y. Supp. 289, affirmed 127 N. Y. 655, 28 N. E. 254; *Shahan v. Swan*, 48 Ohio St. 25, 29 Am. St. Rep. 517, 26 N. E. 222 (adoption; but court intimates that there may be part performance by services in exceptional cases); *Ellis v. Cary*, 74 Wis. 176, 17 Am. St. Rep. 125, 42 N. W. 252, 4 L. R. A. 55. See, *supra*, § 817.

³⁷ *Hinkle v. Hinkle*, 55 Ark. 583, 18 S. W. 1049 (care of parent);

nearly always been to make a will devising lands to plaintiff; the services rendered, the care of an aged or invalid relative, often coupled with an abandonment of the plaintiff's previous home or occupation; or, in a large group of cases, the entire change of situation re-

Owens v. McNally, 113 Cal. 444, 45 Pac. 710, 33 L. R. A. 369 (specific performance refused, since it would be hardship on promisor's wife, who married him in ignorance of the agreement); McCabe v. Healy, 138 Cal. 81, 70 Pac. 1008 (citing many cases); Taft v. Taft, 73 Mich. 502, 41 N. W. 481 (work and labor for plaintiff's father); Wright v. Wright, 99 Mich. 170, 58 N. W. 54, 23 L. R. A. 196 (agreement to devise the property implied from adoption proceedings taken under an unconstitutional statute); Svanburg v. Fosseen, 75 Minn. 350, 74 Am. St. Rep. 490, 78 N. W. 4, 43 L. R. A. 427; Sharkey v. McDermott, 91 Mo. 647, 60 Am. Rep. 270, 4 S. W. 107 (adoption agreement); Hall v. Harris, 145 Mo. 614, 47 S. W. 506 (care of aged parent); Kofka v. Rosicky, 41 Neb. 328, 43 Am. St. Rep. 685, 59 N. W. 788, 25 L. R. A. 207 (adoption agreement); Best v. Grolapp (Neb.), 96 N. W. 641; Johnson v. Hubbell, 10 N. J. Eq. 332, 66 Am. Dec. 773, and note; Van Dwyne v. Vreeland, 12 N. J. Eq. 142 (adoption contract); Vreeland v. Vreeland, 53 N. J. Eq. 387, 32 Atl. 3 (citing many New Jersey cases; care of aged parent); Rhodes v. Rhodes, 3 Sandf. Ch. (N. Y.) 279; Quinn v. Quinn, 5 S. D. 328, 49 Am. St. Rep. 875, 58 N. W. 808; Lothrop v. Marble, 12 S. D. 511, 76 Am. St. Rep. 626, 81 N. W. 885 (services consisted merely in nursing a repulsive invalid for a few days); Brinton v. Van Cott, 8 Utah, 480, 33 Pac. 218 (care of aged woman by young girl); Bryson v. McShane, 48 W. Va. 126, 35 S. E. 848, 49 L. R. A. 527 (*dictum*; plaintiffs also received possession of part of the land).

While the rule is adopted in Minnesota, where the consideration is that the promisee shall "assume a peculiar and personal relation to the promisor, and render to him services of such a character that it is practically impossible to estimate their value by any pecuniary standard," where the services are of a more ordinary character, performance of them does not take the case out of the statute: Stellmacher v. Bruder, 89 Minn. 507, 99 Am. St. Rep. 609, 95 N. W. 324 (board, lodging, nursing, etc., furnished to promisor).

"But a parol agreement of this character, because of the situation and relations of the parties to it and the consequent opportunity for the perpetration of fraud, is regarded with suspicion, and, when its enforcement is sought, is subjected to close scrutiny. It must not only be mutual, but also definite and certain, both in

sulting from a virtual adoption of the plaintiff, when a minor, into the promisor's family, and the discharge of the domestic duties and obligations of affection flowing from such relation.

§ 827. **Miscellaneous Acts of Part Performance.**—While possession, and possession coupled with payment or the making of valuable improvements are the most frequent acts of part performance recognized as sufficient to warrant equitable relief, the courts have interfered in a few other instances. Thus, a dismissal of certain actions at law has been held sufficient, for the plaintiff could not be placed *in statu quo*.³⁸ A parol agreement between co-tenants not to partition land has been enforced when the parties, in reliance upon it, have made leases of the property.³⁹ A release of a dower and homestead right has been held sufficient to warrant the enforcement of a parol contract to convey other land in consideration thereof.⁴⁰ Oral contracts for the conveyance of easements have been enforced when, in pursuance thereof, work has been done in opening windows as directed by defendant, and he has been given employment;⁴¹ and where a railroad has constructed its tracks and located its depot at a certain point, in pursuance of a contract to convey a right of way.⁴²

its terms and as to its subject-matter; and it must be clearly proved: *Cooper v. Carlisle*, 17 N. J. Eq. 529; *Brown v. Brown*, 33 N. J. Eq. 657. So, also, it must plainly appear that that which is alleged as part performance is referable to, and was consequent upon, the contract alone, for the purpose of carrying it into effect: *Eyre v. Eyre*, 19 N. J. Eq. 102; *Pom. Spec. Perf.*, §§ 108, 109": *Vreeland v. Vreeland*, *supra*.

³⁸ *Slingerland v. Slingerland*, 39 Minn. 197, 39 N. W. 146.

³⁹ *Martin v. Martin*, 170 Ill. 639, 62 Am. St. Rep. 411, 48 N. E. 924.

⁴⁰ *Farwell v. Johnston*, 34 Mich. 342.

⁴¹ *East India Co. v. Vincent*, L. R. 35 Ch. D. 694.

⁴² *Telford v. Chicago, P. & M. R. Co.*, 172 Ill. 559, 50 N. E. 105.

§ 828. **Oral Promise to Give.**—A parol promise by one owning lands to give the same to another will be enforced in equity, when the promisee has been induced by the promise to go into possession, and, with the knowledge of the promisor, has made comparatively large expenditures in permanent improvements upon the land.⁴³ The ground of the jurisdiction is that a failure to convey after the donee has made a change of position would amount to a fraud. Equity does not ordinarily interfere to enforce voluntary agreements; but in this case the courts have construed a consideration into the agreement. In the language of a leading case: "Anything that may be detrimental to the promisee or beneficial to the promisor in legal estimation will constitute a good consideration for a promise. Expenditures made upon permanent improvements upon land with the knowledge of the owner, induced by his promise, made to the party making the expenditure, constitute in equity a consideration for the promise."⁴⁴ Such a promise may be enforced against an executor or administrator, as well as against the original promisor.⁴⁵ Where the promise is to convey if the promisee will make improvements, there is a real consideration, and relief will be readily granted.⁴⁶

⁴³ *Neale v. Neale*, 9 Wall. 1, 19 L. ed. 590; *Dozier v. Matson*, 94 Mo. 328, 7 S. W. 268, 4 Am. St. Rep. 388; *Wylie v. Charlton*, 43 Neb. 840, 62 N. W. 220; *Seavey v. Drake*, 62 N. H. 393; *Tunison v. Bradford*, 49 N. J. Eq. 210, 22 Atl. 1073; *Freeman v. Freeman*, 43 N. Y. 34, 3 Am. Rep. 657; *Young v. Overbaugh*, 145 N. Y. 158, 39 N. E. 712; *Cauble v. Worsham*, 96 Tex. 86, 97 Am. St. Rep. 871, 70 S. W. 737. Although the principle is stated in the above cases, in some of them there was a real consideration.

⁴⁴ *Freeman v. Freeman*, 43 N. Y. 34, 3 Am. Rep. 657. See, also, *Seavey v. Drake*, 62 N. H. 393. It must be noted that the courts do not here use the term "consideration" in the technical legal sense of something given for a promise; it is used rather in the sense of something done as a result of a promise.

⁴⁵ *Seavey v. Drake*, 62 N. H. 393.

⁴⁶ See *Gaines v. Kendall*, 176 Ill. 228, 52 N. E. 141; *Clancy v.*

§ 829. **Marriage not Part Performance.**—In cases of contracts made in consideration of marriage it is almost universally held that marriage alone is not such part performance as will take a case out of the operation of the statute of frauds.⁴⁷ This results from the statute itself which requires agreements in consideration of marriage to be in writing. To hold marriage alone to be sufficient would render the statute nugatory; “for, so far as the fact of marriage is concerned, such agreements are always performed before they become the subjects of judicial consideration, and no case would ever be within the statute.”⁴⁸ Marriage coupled with other acts, such as the delivery and acceptance of possession, may, however, be sufficient.⁴⁹ In this connection a distinction should be noted between cases arising between the parties to the marriage themselves and those arising between a party to the marriage and a third person. In the former case marriage coupled with possession is not, under the prevailing theory, sufficient, for the possession is referable to the status as

Flusky, 187 Ill. 605, 58 N. E. 594, 52 L. R. A. 277; *Bigelow v. Bigelow*, 95 Me. 17, 49 Atl. 49; *Freeman v. Freeman*, 43 N. Y. 34, 3 Am. Rep. 657; *Fishburne v. Ferguson*, 85 Va. 321, 7 S. E. 361. All of the above cases do not make the distinction; but in all there was some fact which might logically be called a consideration.

⁴⁷ *Montacute v. Maxwell*, 1 P. Wms. 618; *Caton v. Caton*, L. R. 1 Ch. App. 137; *McAnnulty v. McAnnulty*, 120 Ill. 26, 60 Am. Rep. 552, 11 N. E. 397; *Richardson v. Richardson*, 148 Ill. 563, 36 N. E. 608, 26 L. R. A. 305; *Keady v. White*, 168 Ill. 76, 48 N. E. 314; *Manning v. Riley*, 52 N. J. Eq. 39, 27 Atl. 810; *Reade v. Livingston*, 3 Johns. Ch. 481, 8 Am. Dec. 420; *Adams v. Adams*, 17 Or. 247, 20 Pac. 633; *Hannon v. Hounihan*, 85 Va. 429, 12 S. E. 157. In *Nowack v. Berger*, 133 Mo. 24, 54 Am. St. Rep. 663, 34 S. W. 489, 31 L. R. A. 813, marriage followed by cohabitation was held sufficient.

⁴⁸ *Henry v. Henry*, 27 Ohio St. 121, per *Whitman, J.* See, also, *Caton v. Caton*, L. R. 1 Ch. App. 137.

⁴⁹ *Ungley v. Ungley*, L. R. 5 Ch. D. 887.

Equitable Remedies, Vol. II—86

husband or wife, and not necessarily to any other contract.⁵⁰

§ 830. **Specific Performance Because of Fraud, Independent of Doctrine of Part Performance.**—Independently of the doctrine of part performance, relief may be granted when the defendant has been guilty of fraud which leads to an irretrievable change of position. Accordingly, where a marriage is obtained under a fraudulent promise to convey property, the defendant may be ordered to carry out his contract;⁵¹ although, as we have seen, marriage is not a sufficient part performance to take a case out of the statute. Likewise, where there is a fraudulent omission to have an agreement reduced to writing, which induces an irretrievable change of position, equity will grant relief.⁵² A mere failure to fulfill a promise to have an agreement reduced to writing is not sufficient, however, in the absence of fraud.⁵³

⁵⁰ Henry v. Henry, 27 Ohio St. 121.

⁵¹ Mullet v. Halfpenny, Prec. in Ch. 404; Peek v. Peek, 77 Cal. 106, 11 Am. St. Rep. 244, 19 Pac. 227, 1 L. R. A. 185; Allen v. Moore, 30 Colo. 307, 70 Pac. 682.

⁵² Wood v. Midgley, 5 De Gex, M. & G. 41 (*dictum*); Peek v. Peek, 77 Cal. 106, 11 Am. St. Rep. 244, 19 Pac. 227, 1 L. R. A. 185; Equitable Gas Light Co. v. Baltimore Coal Tar & Mfg. Co., 63 Md. 285; Wooldridge v. Scott, 69 Mo. 669 (*dictum*). See, also, 2 Pom. Eq. Jur., § 921, and cases cited.

⁵³ Wood v. Midgley, 5 De Gex, M. & G. 41 ("The law has said that the defendant is not to be sued unless upon an agreement signed by him. Is it a fraud on that law for him to say, I have agreed, but I will not sign an agreement?"); Wooldridge v. Scott, 69 Mo. 669. For early English cases *contra*, see Leak v. Morrice, 2 Cas. in Ch. 135; Hollis v. Whiteing, 1 Vern. 151. See, also, Cookes v. Mascall, 2 Vern. 200.

CHAPTER XLI.

PARTIAL PERFORMANCE WITH COMPENSATION—
DAMAGES IN PLACE OF A SPECIFIC PERFORMANCE.

ANALYSIS.

§§ 831-836. Partial performance with compensation.

§ 832. The deficiency may be in quantity or quality of, or interest in, the estate, or a defect in title.

§ 833. Vendee's option of specific performance with compensation, or rescission.

§ 834. Limitations on vendee's right: Dower right of vendor's wife.

§ 835. Indemnity instead of compensation, occasionally given.

§ 836. Where no basis for estimating compensation.

§ 837. Damages in equity in place of a specific performance.

§ 831. **Partial Performance With Compensation.**—Where the vendor is unable to perform his contract in its entirety either because of a deficiency in the quantity or the quality of the estate, or because of defects in his title or interest, equity may give him a decree for specific performance with compensation or abatement for the deficiency or defect, if he can substantially perform his contract. Also, where the vendor is unable even substantially to perform his contract, the vendee, at his election, may have specific performance with compensation for the deficiency, on the principle that "where one party would be foiled at law, but the other may have the reasonable, substantial effect of his contract, compensation shall be admitted; not, where the effect would be to put upon him something constitutionally different from that for which he contracted."¹ But the

¹ Lord Erskine in *Halsey v. Grant*, 13 Ves. 73, 79, citing Lord Eldon in *Drewe v. Hanson*, 6 Ves. 675.

contract "does not lie in compensation" if the purchaser "does not get the thing which is the principal object of the contract. It is not merely a small abatement."² The vendor who is unable to perform completely is in a less favorable position than the vendee who has the option, generally, of specific performance with compensation or of refusal to perform if the contract is *materially* affected by the vendor's inability. It is readily seen that courts may vary as to what is a "material" inability,³ but it is usually recognized that the main object of the vendee in the contract must not be affected.

2 *Drewe v. Hanson*, 6 Ves. 675, 679, per Lord Eldon.

3 Lord Thurlow held, in the old Cambridge Wharf and House case, cited in *Drewe v. Hanson*, 6 Ves. 675, 678, that though the vendor could not deliver the wharf, the main object of the vendee's contract, the vendee must accept the house with compensation. This case clearly goes too far, and has been many times criticised. Lord Thurlow was very severe on the vendee. In *Poole v. Shergold*, 1 Cox C. C. 273, Lord Kenyon observed of it: "That was a determination contrary to all justice and reason." See Sugden, *Vend. & Purch.* (5th ed.), 251, for early authorities. In *Towner v. Ticknor*, 112 Ill. 217, 224, the court suggested the rule: "Where the buyer gets substantially all for which he contracted, he ought not to be permitted to refuse to go on and perform the contract on account of a slight deficiency when full compensation can be made in money, and when the deficiency is occasioned by no bad faith on the part of the vendor." In *Knatchbull v. Grueber*, 1 Madd. 167, it was said that if title to an inconsiderable part of the estate cannot be made, if not essential to the full enjoyment, specific performance will be given with compensation. Also, see *King v. Bordeau*, 6 Johns. Ch. 38, 10 Am. Dec. 312; *Drewe v. Hanson*, 6 Ves. 673, 678; *Oldfield v. Round*, 5 Ves. 508; *Bailey v. Piper*, L. R. 18 Eq. 683; *Courcier v. Graham*, 2 Ohio, 341. The deficiency of the amount of land being *small*, the vendor was given specific performance, or it was recognized as his right, with compensation to the vendee in the following cases: *Bailey v. Piper*, L. R. 18 Eq. 683; *Smyth v. Sturges*, 108 N. Y. 495, 504, 505, 15 N. E. 544 (deficiency in partitions, closets, and pipes of store); *Howland v. Norris*, 1 Cox C. C. 59, 61; *McQueen v. Farquhar*, 11 Ves. 467; *Calcraft v. Roebuck*, 1 Ves. Jr. 221, 224. But the deficiency in the amount of the estate being *material*, the vendor was *refused* specific performance with abatement to the vendee in the following cases:

§ 832. The Deficiency may be in Quantity or Quality of, or Interest in, the Estate or a Defect in the Title.—The vendor's inability to complete performance may be due to a deficiency in the amount of the land, or a deficiency in the quality of the estate, as where the particulars of

Drewe v. Corp, 9 Ves. 368 (deficiency affected whole estate); *Piers v. Lambert*, 7 Beav. 546, 547 (sale of waterside premises and wharf or jetty. No title could be made to jetty. The court refused specific performance, as the "jetty was essential to the beneficial enjoyment of said premises contracted to be sold"); *Dalby v. Pullen*, 3 Sim. 29 (vendor could not give title to one-seventh part of the estate); *Lord Brooke v. Roundthwaite*, 5 Hare, 298; *Chicago, Mil. & St. Paul R. R. v. Durant*, 44 Minn. 361, 46 N. W. 676; *Raffy v. Shallcross*, 4 Madd. 227 (vendor could give title to but one-half of estate); *Magennis v. Fallon*, 2 Molloy, 585, 588 (destruction of ornamental timber releases vendee, as that is more than a slight variation from contract, and the value could not be estimated). Deficiency in *quality* of the estate being *small*, the vendor compelled the vendee to accept the land, or the right was recognized, in these cases; *King v. Bardeau*, 6 Johns. Ch. 38, 10 Am. Dec. 312 (where one building of one lot projected slightly on the other lot, both being sold together); *Drewe v. Corp*, 9 Ves. 368 ("any small deficiency may be remedied by compensation"); *Leyland v. Illingworth*, 2 De Gex, F. & J. 248 (the vendor described the property as "well supplied with water." There was no natural supply of water on the premises, and the court held this was such a misdescription that vendor must give compensation to the vendee for the variance, or he would be released from his bargain); *Magennis v. Fallon*, 2 Molloy, 585, 588 (for ordinary dilapidation and neglect before conveyance the vendor must make compensation, and the vendee must accept the conveyance with compensation. The court said: "A slight variation in the qualification of it will not disable the vendor from having a decree for specific performance when compensation can be made pecuniarily for the difference"); *Drewe v. Hanson*, 6 Ves. 673, 678 (here an estate was deficient in not having a right to certain tithes given in the description for sale. Lord Eldon said it was "a prodigiously strong measure" of a court of equity to decree a specific performance when the estate sold tithe free was not, but probably the court speculates that "tithes and lands are subject of separate and accurate valuation, and the value of one does not affect the value of the other," and likewise, though there is a failure of tithes, a part only of the subject of the contract, the whole is not affected, as it would be if the contract was

situation, advantages, parts, character, do not correspond to the description; or to a deficiency in interest,⁴ as having only leasehold, and not freehold, as contracted for, holding subject to an encumbrance⁵ or an easement, etc.; or to a defect in title.⁶ It is enough,

for tithes only). The deficiency in quality being material, specific performance was refused the vendor in these cases: *Magennis v. Fallon*, 2 Molloy, 585, 588 (destruction of ornamental timber before conveyance); *Perkins v. Ede*, 16 Beav. 193 (a strip of land to which seller could not give title lay between the house and the road).

4 Deficiency in interest being small, vendor was given specific performance upon paying compensation in the following cases: *Oldfield v. Round*, 5 Ves. 508 (easement of footpath across meadow); *Hughes v. Jones*, 3 De Gex, F. & J. 307 (encumbrance); *Winne v. Reynolds*, 6 Paige, 407, 413 (slight encumbrance); *Horniblow v. Shirley*, 13 Ves. 81 (encumbrance of rent charge); *Halsey v. Grant*, 13 Ves. 73 (encumbrance of rent charge); *Calcraft v. Roebuck*, 1 Ves. Jr. 221 (two acres out of two hundred and thirty-one acres not freehold); *Howland v. Norris*, 1 Cox C. C. 59, 61. The deficiency of interest being large, specific performance was refused in these cases: *Fordyce v. Ford*, 4 Bro. C. C. 494, 497 (estate sold as freehold proved to be nearly all leasehold); *Drewe v. Corp*, 9 Ves. 368 (similar facts); *O'Kane v. Kiser*, 25 Ind. 168, 170 (contract called for unencumbered title; there was a mortgage upon the land); *Hinckley v. Smith*, 51 N. Y. 21 (similar facts); *Lanyon v. Chesney*, 186 Mo. 540, 85 S. W. 568 (vendor did not have title to part of the land); *Murray v. Nickerson*, 90 Minn. 197, 95 N. W. 898 (vendor's interest was limited by interest of a co-tenant).

5 *Spooner v. Cross* (Iowa), 102 N. W. 1118 (mortgage); *Roberts and Corley v. McFaddin, Weis, and Kyle*, 32 Tex. Civ. App. 47, 74 S. W. 105 (oil lease on the land).

6 Defect in title not being great, specific performance was given vendor with compensation in *Mittigan v. Cooke*, 16 Ves. 1; *Poole v. Shergold*, 1 Cox, 273, 274; *Calcraft v. Roebuck*, 1 Ves. Jr. 221, 224; *Peers v. Lambert*, 7 Beav. 546, 547; *Knatchbull v. Grueber*, 1 Madd. 167; *Le Grand v. Whitehead*, 1 Russ. 309. But specific performance was refused vendor when there was an important defect in title: *Raffy v. Shallcross*, 4 Madd. 227 (title to but one-half of estate); *Fildes v. Hooker*, 3 Madd. 193, 195 (vendor could not give a secure lease for full term); *Drewe v. Corp*, 9 Ves. 368; *Cato v. Thompson*, 9 Q. B. D. 616 (title not marketable); *Westmacott v. Robins*, 4 De Gex F. & J. 390 (title not marketable); *Cowan v. Kane*, 211 Ill. 572, 71 N. E. 1097 (inchoate dower); *Murray v.*

however, if the defect of title is cured before the time for the decree,⁷ if the vendor acted in good faith.⁸ One general rule may be stated, that where the deficiency or defect in any of these respects is not material, the vendor may have specific performance with compensation or abatement against the vendee. But where the deficiency or defect is material, to compel the vendee to perform would be to make a new contract, and that equity will not do. But in all cases where the vendor seeks specific performance he must show that he acted in good faith in these particulars, and did not know of the defect in his title—did not consciously misrepresent.⁹ A vendee, once having refused the title, cannot afterward compel the vendor to perfect it.¹⁰

§ 833. **Vendee's Option of Specific Performance with Compensation, or Rescission.**—Wherever the deficiency or defect does not substantially alter the contract, it is plain that the buyer, being himself subject to specific performance, can enforce the contract against the seller with compensation for the deficiency. The rule, however, goes further than this, in the vendee's favor; where the deficiency or defect is material, the vendee is given

Nickerson, 90 Minn. 197, 95 N. W. 898 (defect by co-tenant's title); Lanyon v. Chesney, 186 Mo. 540, 85 S. W. 568 (no title to part of the land); Roberts and Corley v. McFadden, Weis, and Kyle (Tex. Civ. App.), 74 S. W. 105 (an oil lease on the land); Schencke v. Wicks, 23 Utah, 576, 65 Pac. 732 (cloud of a trust deed); Scott v. Alvarez, [1895] 2 Ch. D. 603 (specific performance refused on failure of title, notwithstanding condition in sale restricting any objection to title).

⁷ Haffey v. Lynch, 143 N. Y. 241, 38 N. E. 298; Van Bibber v. Reese, 71 Md. 608, 18 Atl. 892, 6 L. R. A. 332; Hawes v. Swanzey, 123 Iowa, 51, 98 N. W. 586. See, also, *ante*, §§ 772, 808.

⁸ Dalby v. Pullen, 3 Sim. 29.

⁹ Eggert v. Pratt (Iowa), 102 N. W. 786; Ormsby v. Graham, 123 Iowa, 202, 98 N. W. 724.

¹⁰ Milmo v. Murphy, 65 N. J. Eq. 767, 56 Atl. 292.

the option to refuse performance or to have specific performance with compensation or abatement.¹¹ But where the deficiency is so great as practically to make compensation or damages the main object of the suit, the vendee will be denied specific performance with compensation.¹² There are some other exceptions to this doctrine, as will be shown. But to be entitled to specific performance with compensation, the buyer must, generally, have been unaware of the deficiency at the time of the bargain.¹³

§ 834. Limitations on the Vendee's Right: Dower Right of Vendor's Wife.—The buyer's right to specific performance with compensation is subject to certain limita-

11 *Cowan v. Kane*, 211 Ill. 572, 71 N. E. 1097 (inchoate dower; value not easily estimated); *Dale v. Lister*, cited in 16 Ves. 7 (vendor could not make title to part of estate beyond his life. Vendee given reduction of purchase price for the deficiency); *Bennet v. Fowler*, 2 Beav. 302 (defective title. The court said: "The obligation to which a vendor is subject to make out a good title is intended for the benefit of the purchaser only"); *Harding v. Parshall*, 56 Ill. 219 (defective title); *Townsend v. Vanderwereker*, 160 U. S. 171, 182, 16 Sup. Ct. 258, 40 L. R. A. 382 (citing 3 Pom. Eq. Jur., §§ 1405, 1407); *Nuttigan v. Cooke*, 16 Ves. 1.

12 *Durham v. Legard*, 34 Beav. 611 (by mistake of vendor, estate of eleven thousand eight hundred acres was sold as estate of twenty-one thousand seven hundred acres. Court refused vendee specific performance with compensation, as it was not a case for compensation, but one to avoid the contract). *Chicago, Mil. & St. Paul R. R. v. Durant*, 44 Minn. 361, 46 N. W. 676 (the part that could be conveyed would be relatively so small "that compensation or damages would apparently be the main object of the suit").

13 *Lucas v. Scott*, 41 Ohio St. 636, 641, citing Pom. Spec. Perf., § 438; *Castle v. Wilkinson*, L. R. 5 Ch. App. 534 (purchaser knowing of wife's interest cannot now compel husband to convey his own interest alone, with or without compensation, as his contract was to convey, *with* his wife, the whole estate). Whenever the seller is unable to convey all that he agreed to, the buyer is entitled as a matter of right, in all cases, if he will pay the full contract price, to specific performance of whatever interest the seller has: *Harding v. Parshall*, 56 Ill. 219.

tions; as, when it conflicts with the intervening rights of third parties,¹⁴ an instance of which is the case of the right of the wife to be protected in her dower interest.¹⁵ Where the wife of a vendor refuses to convey her inchoate dower interest in the land which the vendor has contracted to sell, equity in many jurisdictions denies specific performance with compensation against the vendor for the deficiency, viz., the dower interest, on the ground that compulsion upon the husband would tend to cause him to procure his wife's conveyance of dower against her will.¹⁶ For that reason the buyer must be satisfied to take less than he contracted for by the amount of the dower interest, or abandon the contract. It is immaterial whether the vendor's wife had joined with her husband in the contract to sell. But, by a rule *contra*, in England¹⁷ and in many American jurisdictions,¹⁸ the husband's failure to convey the

14 *Thomas v. Deering*, 1 Keen, 729, 748.

15 *Westmacott v. Robins*, 4 De Gex, F. & J. 390.

16 *Hawralty v. Warren*, 18 N. J. Eq. 124, 128, 90 Am. Dec. 613, where the rule is stated: "The court will not order him [the husband] to procure his wife's conveyance of dower interest, nor require him to furnish indemnity against her right of dower, unless in cases of clear fraud"; *Humphrey v. Clement*, 44 Ill. 299, 302; *Jackson v. Torrence*, 83 Cal. 521, 23 Pac. 695; *Peeler v. Levy and Wife*, 26 N. J. Eq. 330; *Riesz's Appeal*, 73 Pa. St. 485; *Lucas v. Scott*, 41 Ohio St. 636; *Sternberger v. McGovern*, 56 N. Y. 12; *Graybill v. Brugh*, 89 Va. 895, 37 Am. St. Rep. 894, 17 S. E. 558, 21 L. R. A. 133; *Barbour v. Hickey*, 2 App. D. C. 207; *Fortune v. Watkins*, 94 N. C. 304, 315; *Ormsby v. Graham*, 123 Iowa, 202, 98 N. W. 724. The other grounds urged in support of the rule by Sharswood, J., in *Riesz's Appeal*, *supra*, are clearly shown to be untenable, in *Pom. Spec. Perf.*, §§ 460, 461. Of course, if the vendee knows the vendor is a married man, and therefore is aware of the wife's interest, he is not entitled to compensation, on any view: *Pom. Spec. Perf.*, § 461; *supra*, § 833, at note 13.

17 *Wilson v. Williams*, 3 Jur., N. S., 810; and see *Barnes v. Wood*, L. R. 8 Eq. 424.

18 *Wright v. Young*, 6 Wis. 127, 70 Am. Dec. 453; *Springle v. Shields*, 17 Ala. 295; *Wingate v. Hamilton*, 7 Ind. 73; *Hazelrig v.*

whole title because of any interest his wife may have, is treated as an ordinary case of defective title, and he must convey his interest with compensation for the amount of her interest, whether dower or of other nature. Even where the first mentioned rule prevails which refuses to bring compulsion upon the husband out of tenderness for the wife, if the husband and wife are acting in collusion to defeat the buyer, equity will then disregard the protective principle and compel conveyance of the husband's interest with compensation, or indemnity.¹⁹

§ 835. **Indemnity Instead of Compensation Occasionally Given.**—It is the general rule of equity not to give indemnity with specific performance, but this rule has been departed from, as where a collusive husband was compelled to convey his interest and give an indemnity for the inchoate dower right of the wife in the form of a mortgage on the land.²⁰ If the dower interest should never vest, the indemnity would be released.

§ 836. **Where No Basis of Estimating Compensation.**—Equity will refuse a decree for conveyance with com-

Hutson, 18 Ind. 481; *Martin v. Merrit*, 57 Ind. 34, 26 Am. Rep. 45; *Troutman v. Gowing*, 16 Iowa, 415; *Leach v. Forney*, 21 Iowa, 271, 89 Am. Dec. 574; *Zebble v. Sears*, 38 Iowa, 507; *Miller v. Nelson*, 64 Iowa, 458, 20 N. W. 759; *Walker v. Kelly*, 91 Mich. 212, 51 N. W. 934 (compensation for wife's dower given); *Sanborn v. Nockin*, 20 Minn. 178.

¹⁹ See next section; also, *Pom. Spec. Perf.*, § 462.

²⁰ *Hawralty v. Warren*, 18 N. J. Eq. 124, 128, 90 Am. Dec. 613; *Young v. Paul*, 10 N. J. Eq. 401, 64 Am. Dec. 456. It was given, however, in the following cases: *Young v. Paul*, 10 N. J. Eq. 401, 64 Am. Dec. 456; *Lounsbery v. Locander*, 25 N. J. Eq. 554, 559 ("a court of equity will not compel the vendor to give an indemnity except under extraordinary circumstances"); *Horniblow v. Shirley*, 13 Ves. 82 (indemnity for tithes by vendee retaining part of purchase-money like a mortgage lien); *Halsey v. Grant*, 13 Ves. 73.

pensation or abatement for the deficiency, if it is unable to compute fairly the value of the deficiency or defect,²¹ as the contingency of a forfeiture, which the vendee discovered after making the contract.²²

§ 837. **Damages in Equity in Place of a Specific Performance.**—"If the vendor has disabled himself from performance after making the contract, and if the disability existed at the time of making the contract from a defect in his title, a court of equity will, in either of these cases, award damages to the vendee-plaintiff, provided he commenced his suit in good faith, without any knowledge of the disability; but will not, in general, grant damages if the plaintiff was aware of the disability at the time of bringing his suit."²³

21 *Westmacott v. Robins*, 4 De Gex, F. & J. 390, 397; *Cato v. Thompson*, 9 Q. B. D. 616, 618 (restrictive building covenants); *Humphrey v. Clement*, 44 Ill. 299, 302 (court said value of dower, being uncertain, could not be estimated; that value based on the actuary tables might be unjust to one party or the other, as such indeterminate interest was not in contemplation at the making of the contract; cf. *Pom. Spec. Perf.*, § 460); *Sternberger v. McGovern*, 56 N. Y. 12 (inchoate dower interest cannot be estimated with fairness to vendor); *Magennis v. Fallon*, 2 Molloy, 585, 588; *Perkins v. Ede*, 16 Beav. 193; *Rudd v. Lascelles*, [1900] L. R. 1 Ch. 815 (restrictive covenants. The court says: "It is almost impossible to assess compensation for covenants of this nature").

22 *Westmacott v. Robins*, 4 De Gex, F. & J. 390, 397.

23 4 *Pom. Eq. Jur.*, § 1410, note. See 1 *Pom. Eq. Jur.* (3d ed.), § 237, notes 3, (e), (f), and (g), where the rules on this subject are more fully stated, and cases cited. There is also some authority for the view that where the plaintiff might fairly and reasonably have expected the court to grant specific performance, but that relief is denied for reasons which operate upon the court's judicial discretion, the case will be retained for the awarding of damages: *Waite v. O'Neil*, 72 Fed. 348, 76 Fed. 408, 22 C. C. A. 248, 34 L. R. A. 550; also, where the statute of limitations has run upon the contract pending the suit: *Combs v. Scott*, 76 Wis. 662, 45 N. W. 532. See 1 *Pom. Eq. Jur.* (3d ed.), p. 344, § 237, note (g).

CHAPTER XLII.

EQUITABLE ESTATES AND INTERESTS UNDER THE
CONTRACT OF SALE AND PURCHASE OF LAND.

ANALYSIS.

- § 838. The equitable conversion.
- §§ 839-846. Rights of inheritance from parties to the contract.
 - § 839. General principle.
 - § 840. Heir or devisee of vendee.
 - § 841. Vendor's representatives.
 - § 842. Rights of inheritance where the contract is never performed.
 - § 843. Same—When the equitable conversion is not made.
 - § 844. On death of vendor in possession, the rents go to heir.
 - § 845. Effect of unperformed conditions.
 - § 846. Option to purchase, exercised after death of vendor.
 - § 847. Devise of lands contracted for.
 - § 848. Contract to sell revokes will *pro tanto*.
 - § 849. Dower interests under the contract.
- §§ 850-856. Assignees and subsequent purchasers.
 - § 850. Rights of the assignee of the vendee.
 - § 851. Assignee of the vendee not subject to specific performance.
 - § 852. Grantee of vendor is subject to specific performance.
 - § 853. The equitable grounds for the rights against the grantee of the vendor and in favor of the assignee of the vendee.
 - § 854. Assignment of the purchase-money notes transfers the security.
 - § 855. Vendor's assignee in bankruptcy subject to specific performance.
 - § 856. Vendee's assignee in bankruptcy not subject to specific performance.
 - § 857. Waste by vendee; by vendor.
 - § 858. Vendor may be liable as trustee, for deterioration.
 - § 859. Loss by fire or other accident; usually falls on vendee.
 - § 860. Vendee generally entitled to insurance money.
 - § 861. Loss by occurrence of contingency on the vendee.
 - § 862. Foreclosure of vendee's equity of specific performance.
 - § 863. Sale of the property in lieu of strict foreclosure.

§ 838. **The Equitable Conversion.**—Lord Eldon, in *Seton v. Slade*, states the result of the contract to purchase land thus: “The effect of a contract to purchase is very different at law and in equity. At law the estate remains that of the vendor; and the money that of the vendee. It is not so here. The estate from the sealing of the contract is the real property of the vendee. It descends to his heirs. It is devisable by his will; and the question, whose it is, is not to be discussed merely between the vendor and vendee; but may be to be discussed between the representatives of the vendee.”¹

§ 839. **Rights of Inheritance from Parties to the Contract—General Principles.**—The rights of the heir and the representatives of the vendor and vendee, on the decease of either before title has passed under a valid contract

¹ *Seton v. Slade*, 7 Ves. 265, at 274. See, also, 1 Pom. Eq. Jur., §§ 368, 372; 3 Pom. Eq. Jur., § 1260.

Few propositions have been more frequently repeated by the courts than the statement that on a contract for the sale and purchase of lands, “the vendor is deemed the *trustee* for the purchaser of the estate sold, and the purchaser as the *trustee* for the vendor of the purchase money.” It is difficult to understand in what sense the vendee can be called a trustee of the purchase-money, in the absence of some fund definitely set aside and appropriated for the purpose, which the vendor may follow so long as it can be traced. While the vendor, after the purchase-money is fully paid, may properly be described as trustee (see *Wall v. Bright*, 1 Jacob & W. 494, 508), his position before that time has more points of analogy to that of a mortgagee under the original English system, since he holds the legal title of the land, not only for the eventual benefit of the vendee, but for his own security as well. This analogy is much more useful in working out the details of the rules resulting from the theory of equitable conversion. English judges have been at more pains than American judges to state and describe with accuracy the positions in equity of the vendor and vendee. See extracts from these opinions in 3 Pom. Eq. Jur., § 1260, note 3, especially from Sir George Jessel’s famous judgment in the great case of *Lysaght v. Edwards*, L. R. 2 Ch. D. 499. That the vendor, if properly a trustee, is an *express* and not a *constructive* trustee, see 3 Pom. Eq. Jur., § 1046.

to convey lands, follow directly from the fundamental principle of equity, that "in equity, upon an agreement for the sale of lands, the contract is regarded for most purposes, *as if already specifically executed*. The purchaser becomes the equitable owner of the lands, and the vendor of the purchase money."² In working out the testamentary rights of the heir and the representatives as to land under the contract for sale, equity considers these rights as if the title to the land had actually passed before the death of the vendor or the vendee.³ "Although the purchase money is unpaid, [if] the contract is valid and binding, it has this remarkable effect, that it converts the estate, so to say, in equity; it makes the purchase money a part of the personal estate of the vendor, and it makes the land a part of the real estate of the vendee."⁴

§ 840. **Heir or Devisee of Vendee.**—Thus, where the vendee dies, having a contract for lands, but the conveyance has not yet been made to him, the vendee's interest in the lands "shall be considered as real estate and descend to his heir, or he may devise them by will, and his representatives shall pay the purchase money out of the assets."⁵ The heir or devisee of the vendee in equity can compel the executor or administrator to pay the unpaid purchase-money out of the personalty,

² *Haughwout v. Murphy*, 22 N. J. Eq. 531, 546. In general, see 1 Pom. Eq. Jur., §§ 368, 372.

³ In *Loventhal v. Home Ins. Co.*, 112 Ala. 108, 57 Am. St. Rep. 17, 20 South. 419, 33 L. R. A. 258, it is said: "As land the vendee may convey or devise it, and as land it is descendible to his heirs, who may in a court of equity compel specific performance of the contract."

⁴ *Thomas v. Howell*, L. R. 34 Ch. D. 166, quoting *Lysaght v. Edwards*, L. R. 2 Ch. D. 506.

⁵ *Milner v. Mills*, *Moseley*, 123; *Hathaway v. Payne*, 34 N. Y. 92, 103.

for equity regards the transaction as completed, and a conversion to have been made of that much of the vendee's personalty from the date of the contract.⁶

§ 841. **Vendor's Representatives.**—In the case of the vendor's death, where he is under contract to sell lands, his heir receives the title in trust for the vendee, and must convey upon payment of the purchase-money. But the purchase-money goes not to the heir, but to the personal representative, of the vendor,⁷ for the vendor's interest had been "converted" by the contract from realty into personalty. The executor of the vendor can bring suit for specific performance of the contract, and compel the purchaser to pay the purchase price, and joining the heir, compel him to convey the land to the purchaser; the executor holding the proceeds as personalty for those entitled.⁸

§ 842. **Rights of Inheritance Where the Contract is Never Performed.**—If the contract cannot be carried out

⁶ *Daniels v. Davison*, 16 Ves. 249, 253, holding that "the benefit of the agreement should go to the heir [of the vendee]; the executor paying for the purchase"; *Wimbish v. Montgomery Co.*, 69 Ala. 575, 578; *Reid v. Davis*, 4 Ala. 83; *Baldwin v. Thompson*, 15 Iowa, 504, 508; *Loventhal v. Home Ins. Co.*, 112 Ala. 108, 113, 57 Am. St. Rep. 17, 20 South. 419, 33 L. R. A. 258.

⁷ *Baden v. Pembroke*, 2 Vern. 213. In *Hathaway v. Payne*, 34 N. Y. 92, 103, it is said: "The vendor in such a case is deemed in equity to be the trustee for the vendee of the title, and the vendee is the trustee of the vendor for the purchase money. . . . The money due on the contract is treated as personal estate of the vendor; and in case of death it goes to executors or administrators of the vendor, and does not descend to the heir, and every subsequent purchaser from either, with notice becomes subject to the same equities as the party would be from whom he purchased." Also see *Williams v. Haddock*, 145 N. Y. 144, 150, 39 N. E. 825.

⁸ *Bubb's Case*, Freem. Ch. 38; *Keep v. Miller*, 42 N. J. Eq. 100, 107, 6 Atl. 495; *Williams et al. v. Haddock*, 145 N. Y. 144, 39 N. E. 825.

after the death of either of the parties, the rights of the heir or next of kin in the testator's interest are treated precisely as if the contract had been carried out, *if the contract was valid and enforceable by the testator at his death*. Thus, where after the vendee's death, the contract was rescinded, the administrator was compelled to pay to the vendee's heir an amount from the personalty equivalent to the price of the land.⁹ Where a purchaser loses his right to specific performance by his laches, the interest of the next of kin of the deceased vendor is not affected. Although the land does not pass to the vendee, yet the estate will belong to the next of kin of the vendor and not the heir, who held the title in trust for the vendee. This disposition arises from the principle that a valid contract works an equitable conversion of the land into personalty from the time when it is made. And on the principle of equitable conversion, the purchase-money became a part of the vendor's personal estate, and as such was distributable to his widow and next of kin.¹⁰

§ 843. Same—When the Equitable Conversion is not Made. But the contract must be valid and enforceable at the time of the death of the testator in order that the equitable character of the estate shall prevail over the legal, i. e., that there shall be in equity a conversion,¹¹ as, of the vendor's interest in the land into personalty.

⁹ *Matthews v. Gadd*, 5 South Australian Law Reports, 129; *Whittaker v. Whittaker*, 4 Bro. C. C. 31; *Lysaght v. Edwards*, L. R. 2 Ch. D. 499, 521.

¹⁰ *Miller v. Miller*, 25 N. J. Eq. 354; *Curre v. Bowyer*, 5 Beav. 6, note (b).

¹¹ "A valid contract," according to Jessel, M. R., in *Lysaght v. Edwards*, L. R. 2 Ch. D. 506, "means in every case a contract sufficient in form and substance, so that there is no ground for setting it aside as between the vendor and purchaser—a contract binding on both parties. As regards real estate, however, another element

As an illustration of this principle, the question of title is very important. Not only must there be a good contract from the legal point of view of consideration, but if the vendor could not make a good title, equity would not decree specific performance,¹² and there is no conversion. Then the vendor's interest at his death is land, and the vendee's interest is personalty, notwithstanding the contract. Lord Hardwicke stated the rule: "When an ancestor, after the making of a will, agrees for the purchase of particular lands, the heir at law would have a right to them, provided a good title can be made out, *otherwise if it cannot.*"¹³ And the heir of the vendee cannot have the money laid out in other lands. The interest is then only personalty.¹⁴ But the fact of the purchaser being able to pay or not able to pay is immaterial; if there is a valid contract, the conversion is effected.¹⁵

§ 844. On Death of Vendor in Possession, the Rents go to the Heir.—Where the vendor is himself in receipt of the rents at the time of his death, as is usually the case up to the time for the possession to be changed from the vendor to the vendee, not the next of kin, but the heir,

of validity is required. The vendor must be in a position to make a title according to the contract."

12 Jessel, M. R., in *Lysaght v. Edwards*, *supra*, speaking of the effect of title says: "The contract will not be a valid contract unless he has either made out his title according to the contract, or the purchaser has accepted the title, for however bad a title may be, the purchaser has a right to accept it, and the moment he has accepted the title the contract is fully binding upon the vendor."

13 *Green v. Smith*, 1 Atk. 572; *Thomas v. Howell*, L. R. 34 Ch. D. 166; *Broome v. Monck*, 10 Ves. 597.

14 *Lysaght v. Edwards*, L. R. 2 Ch. D. 499, at p. 517, the court says: "If the title is not good, there is no valid agreement, and the whole doctrine [of equitable conversion] assumes there is a valid agreement."

15 *Lysaght v. Edwards*, L. R. 2 Ch. D. 499, at page 517.

Equitable Remedies, Vol. II—87

who takes the legal title, to hold until the purchase-money shall be paid, is entitled to the rents up to the time the vendee could claim them, in lieu of interest money paid.¹⁶ It is true that equity considers the equitable conversion to have been made from the date of the contract, so that the next of kin can demand the specific performance of the contract, and have the purchase-money, but nevertheless equity having permitted the vendor himself to retain the beneficial interest in the land—the rents—up to the change of possession, the heir is entitled to that same beneficial interest as realty.

§ 845. **Effect of Unperformed Conditions.**—Enforceability of the contract at the time of death of one of the parties refers to the validity of the contract and not to events in the nature of conditions which may not have been performed because such performance was not due at the time of the death of testator. It is sufficient if these conditions are performed by his representatives. Provisions of the nature of conditions in contracts of sale do not alter the rule that the contract of sale is an equitable conversion of the realty into personalty.¹⁷

§ 846. **Option to Purchase, Exercised After Death of Vendor.**—When a binding option for the purchase of land is not exercised until after the death of the vendor, it is the rule (often criticised for its harshness) that the conversion then relates back, as between the heir and personal representative of the vendor, to the date of the contract by which the option was given. The personal representative of the vendor, therefore, is entitled to the purchase-money; but the heir is allowed to receive and

¹⁶ *Lumsden v. Fraser*, 12 Sim. 263; *Shadforth v. Temple*, 10 Sim. 184; *Watts v. Watts*, L. R. 17 Eq. 217.

¹⁷ *Williams v. Haddock*, 145 N. Y. 144, 39 N. E. 825.

retain the rents up to the time when the option was exercised.¹⁸

§ 847. **Devise of Lands Contracted for.**—Lands contracted for pass by the devise of the vendee, and his executor must pay the purchase price out of the personalty.¹⁹ Even though the devise is general, as, “all my lands,” it passes the equitable title of lands contracted for by the vendee. The devisee can bring suit to compel specific performance of the contract.²⁰ A devise by the vendor of “all real estate which may be vested in me as trustee” passes the vendor’s title in lands contracted to be sold; the devisee in trust, and not the heir, taking the title to hold for the purchaser.²¹

§ 848. **Contract to Sell Revokes Will Pro Tanto.**—Where a testator, subsequent to making a will devising certain lands, enters into a valid contract to sell the lands, the contract is usually said to revoke the clause of the will relating to the same land. Another view is that the contract takes the land out from under the operation of the will, and hence there is nothing for the will to

18 3 Pom. Eq. Jur., § 1163, and notes, where the rule is more fully stated. In addition to the cases there cited, see *Newport Waterworks v. Sisson*, 18 R. I. 411, 28 Atl. 336. *Contra*, rejecting the rule, and holding the heir entitled to the purchase price, see *Smith v. Loewenstein*, 50 Ohio, 346, 34 N. E. 159.

19 *Potter v. Potter*, 1 Ves. Sr. 436, 440; *Daire v. Beversham*, Nels. 76; *Greenhill v. Greenhill*, 2 Vern. 679. Before the Wills Act of 1838, in England, the contract must have been made before the execution of the will, and it must have been a valid and enforceable contract by the buyer before the execution of the will, e. g., a contract in writing, and not by parol; *Rose v. Cunyngham*, 11 Ves. 550, 554; but after the Wills Act of 1838, in England, permitting after-acquired property to pass, it was sufficient if the contract was valid and enforceable at the death of the testator.

20 *Buck v. Buck*, 11 Paige, 170.

21 *Lysaght v. Edwards*, L. R. 2 Ch. D. 499.

act upon.²² The contract to sell operates an equitable conversion of the land, and the prospective devisee can receive it then only in trust to convey, as from that time the land is in equity personalty of the vendor. The conversion by the contract "had the effect of taking the land from under the operation of the first clause of her will, and giving the proceeds of it to her residuary legatees and devisees as a part of her personal estate."²³ Though the contract to sell is rescinded, the clause of devise in the will is not allowed to operate on the land. Chancellor Kent states the doctrine of revocation of a testamentary clause by contract to sell to be in equity like a legal conveyance in law. There a subsequent reconveyance does not restore the devise. Once revoked by the contract the devise is gone forever, unless the will is republished.²⁴ As the executor's power depends upon the establishment of the contract as against the devisees under the clause of the will, the devisees should be made parties to the bill.²⁵

§ 849. **Dower Interests Under the Contract.**—"A notable exception to the identity of equitable and legal estates formerly existed, in that a widow was not dowable in a trust estate."²⁶ But this anomaly has now been removed by legislation in England and the United States generally wherever dower interests are recognized, and

²² *Knollys v. Alcock*, 5 Ves. 649, 654; *Cotter v. Layer*, 2 P. Wms. 622. In *Walton v. Walton*, 7 Johns. Ch. 258, 267, the rule is expressed: "A valid contract for the sale of lands devised is as much a revocation of the will in equity as a legal conveyance of them would be at law. The estate from the time of the contract is considered the estate of the vendee."

²³ *Coles v. Feeney*, 52 N. J. Eq. 493, 495, 29 Atl. 172.

²⁴ *Walton v. Walton*, 7 Johns. Ch. 258, 268.

²⁵ *Coles v. Feeney*, 52 N. J. Eq. 493, 495, 29 Atl. 172.

²⁶ *Young v. Young*, 45 N. J. Eq. 27, 36, 16 Atl. 921, citing the court in *Cushing v. Blake*, 3 Stew. Eq. 689, 695.

the widow of the vendee is entitled to the dower interest in the lands of which her husband is beneficially seised by his contract.²⁷ The courts have often had to determine whether the statute giving the widow dower in equitable estates extended to those arising from a contract for the sale of land, but there has been no hesitation in finding that they were so included.²⁸

Following the general rule, in order that the widow may have dower under the statute, the contract for the lands must have been enforceable by the vendee at his death, or of such nature that it could be completed after his death.²⁹

In a number of states, alienation by the vendee of his equitable interest in the lands contracted for, but not conveyed, defeats the widow's right to dower. He must be beneficially seised at his death for her dower right to attach.³⁰

If the personalty of the vendee's estate, the primary fund for the purchase of the land contracted for, is insufficient to complete the purchase, in most jurisdictions it is held that the widow must contribute her proportion with the heirs towards the purchase-money.³¹

Where the contract for the sale of the lands is made prior to the marriage of the vendor, equity regards him as holding his legal title in trust for the vendee, and

²⁷ *Young v. Young*, 45 N. J. Eq. 27, 36, 16 Atl. 921; *Hart v. Logan*, 49 Mo. 47; *Tink v. Walker*, 148 Ill. 234, 35 N. E. 765; *Longwell v. Bentley*, 23 Pa. St. 99, 103; *In re Ransom*, 17 Fed. 331; *Malin v. Coult*, 4 Ind. 535.

²⁸ *Thompson v. Thompson*, 1 Jones (N. C.), 430.

²⁹ *Tink v. Walker*, 148 Ill. 234, 35 N. E. 765.

³⁰ *In re Ransom*, 17 Fed. 331; *Hawley v. James*, 5 Paige, 318; *Morse v. Thorsell*, 78 Ill. 600; *Lynn v. Gephart*, 27 Md. 547; *Abbott v. Bosworth*, 36 Ohio St. 605.

³¹ *Greenbaum v. Austrian*, 70 Ill. 591; *Virgin v. Virgin*, 189 Ill. 145, 59 N. E. 586; *Hart v. Logan*, 49 Mo. 47, etc.; but see *contra*, *Caroon, Adm., v. Cooper et al.*, 63 N. C. 386.

by the usual rule that no dower interest attaches to a trust estate, the widow of the vendor has no dower in the lands contracted to be sold before her marriage.³² But if the contract fails of completion because of defect of title, the vendor's widow has her dower.³³ No equitable conversion had taken place.

§ 850. **Assignees and Subsequent Purchasers—Right of the Assignee of the Vendee.**—The assignee of the vendee's contract is regarded in equity as stepping into his shoes,³⁴ succeeding to his rights to the land, which is regarded as a trust *res* or mortgage security. "The assignee of a contract, although it is a chose in action, after a demand of performance, and refusal on the part of the obligor, may in equity maintain suit in his own name for specific performance."³⁵ This right of the assignee of a vendee to compel specific performance of the contract for conveyance is everywhere recognized.³⁶ The assignee of the vendee's *option* to purchase may enforce the option in equity. It is a right growing out of the contract for the option, and equity completes the right.³⁷ The vendor's defense of

³² Lunsford v. Jarrett, 11 Lea, 192; Rawlings v. Adams, 7 Md. 26; Dean's Heirs v. Mitchell's Heirs, 4 J. J. Marsh. 451; Adkins v. Holmes, 2 Ind. 197, 199; 4 Kent's Commentaries, 50.

³³ Lunsford v. Jarrett, 11 Lea, 192.

³⁴ Crockford v. Alexander, 15 Ves. 138; Button v. Schroyer, 5 Wis. 598; Costello v. Friedman (Ariz.), 71 Pac. 935; Keller v. Lewis, 53 Cal. 113; Fairchild v. Mullan, 90 Cal. 190, 27 Pac. 201; Hester v. Hunniet, 104 Ala. 282, 16 South. 162.

³⁵ Ross v. Page, 11 N. D. 458, 92 N. W. 822; Murphy v. Marland, 8 Cush. 575; Brooklyn El. R. R. Co. v. Brooklyn, B. & W. E. R. R. Co., 23 App. Div. 29, 48 N. Y. Supp. 665 (the vendee railroad company is given an injunction against the assignee of the vendor railroad company, violating certain operating rights sold plaintiff).

³⁶ For instance, see Corbus v. Teed, 69 Ill. 205; Currier v. Howard, 14 Gray, 511; Owen v. Frink, 24 Cal. 171.

³⁷ House v. Jackson, 24 Or. 89, 32 Pac. 1027.

insolvency of the vendee in a contract for a lease does not avail him against the vendee's assignee, who is solvent. The latter is given specific performance against the vendor, although the assignor could not obtain it.³⁸ But to obtain specific performance, the assignee must respond to all obligations for which the vendor holds the land in the way of a security. Thus the unpaid notes of the vendee given to the vendor for the land must be paid by the assignee of the vendee before he can obtain specific performance of the contract. The assignee can enforce the rights of the assignor under the contract, but "he can have no greater rights than they [the assignors] had, and he is bound to do all which they would be required in equity and good conscience to perform before obtaining a conveyance."³⁹ The assignee of the vendee is not entitled to specific performance while his obligation to his assignor remains unsettled, for the assignor must be allowed to receive the conveyance from the vendor to hold as security against the assignee until the latter has satisfied his obligation. Thus, where a vendor conveyed to the vendee's assignee before the latter had paid the vendee, in fact before the assignee's obligation had matured, the court decreed that the assignee should convey to his assignor.⁴⁰

§ 851. **Assignee of Vendee not Subject to Specific Performance.**—Although the assignee of the vendee has all the *right* of the vendee in the contract, he is not subject to

³⁸ *Crosbie v. Tooke*, 1 Mylne & K. 431.

³⁹ *Wass v. Mugridge*, 128 Mass. 394.

⁴⁰ *Bird v. Hall*, 30 Mich. 374 (Cooley, J., here said: "These parties cannot be allowed to deprive him [the vendee and assignor] of his security and turn him over to the contingencies of successive suits at law after his demand has matured. He has a right to be protected against the suits and the contingencies by having ample and effectual security in his own hands, and the remedy in equity was alone adequate to the case").

the *obligations* of the contract, except upon his option to enforce specific performance. Thus he can proceed in equity against the vendor to secure the land, but the vendor cannot proceed against him, the assignee, to compel him to take the land.⁴¹ The remedy of the vendor is against the buyer, and (by way of enforcing the vendor's "lien") against the land.

§ 852. Grantee of Vendor is Subject to Specific Performance.—Just the reverse is true of the grantee of the vendor. He is subject to specific performance by the vendee or the vendee's assignee, where he has notice of the prior contract,⁴² or has given no value for his title.⁴³

⁴¹ *Comstock v. Hitt*, 37 Ill. 542 (here the vendor was treated as a mortgagee, and the assignee as the grantee of the mortgagee. The court held: "Taking a deed 'subject to an outstanding mortgage' creates no personal liability on the grantee to pay off the encumbrance unless he has specially agreed so to do, or the amount of the mortgage has been deducted from the purchase price." In *Corbus v. Teed*, 69 Ill. 205, the law is thus stated: "Where the assignee of the vendee does not offer to pay the money, and does not produce the assignment, the vendor has a clear right to hold the party with whom he contracted to the contract, and tender the deed to him in fulfillment of the contract, though the assignee has paid in part. *It was optional with the assignee to perform or not.* Complainant (vendor) could not compel him to perform. Should he file a bill for such a purpose the answer would be that he had made no contract with the complainant").

⁴² 2 Pom. Eq. Jur., § 688, notes 5 and (e), and cases cited; *Veith v. McMurtry*, 26 Neb. 341, 42 N. W. 6; *Elsbury v. Skull*, 32 Ind. App. 556, 70 N. E. 287; *Randolph v. Wheeler*, 182 Mo. 145, 81 S. W. 419 (in this case the right of the grantee of land subject to a prior contract to have specific performance against the vendee was recognized); *Handy v. Rice*, 98 Me. 504, 57 Atl. 847; *Potter v. Sanders*, 6 Hare, 1; *Moore v. Crawford*, 130 U. S. 122, 9 Sup. Ct. 447, 32 L. R. A. 878; *Lovejoy v. Potter*, 60 Mich. 95, 26 N. W. 844; *White v. Mooers et al.*, 86 Me. 62, 65, 29 Atl. 936; *Walker v. Cox*, 25 Ind. 271; *Bryant v. Booze*, 55 Ga. 438.

⁴³ *McCullom v. Mackrell et ux.*, 13 S. D. 262, 83 N. W. 255; *Young v. Young*, 45 N. J. Eq. 27, 16 Atl. 921, 51 N. J. Eq. 491, 27 Atl. 627.

It is everywhere settled that if the grantee takes the title from vendor without knowledge of the prior contract, giving value therefor, he can retain it, and the vendee has no remedy against him.⁴⁴

§ 853. **The Equitable Ground for Rights Against the Grantee and in Favor of the Assignee of the Vendee.**—This power of the buyer or his assignee to enforce specific performance against the grantee with notice or without value given, is due to the view in equity that a trust attaches to the land by the contract, and whoever takes the land with notice or without paying value, holds merely the legal title in trust for the buyer or his assignee. It is to be added that the title is held not as a dry trust but as a *security* title, unless the entire consideration has been paid.⁴⁵ Neither the vendor nor his assignee have any right of specific performance against the vendee's assignee, however, since there is no trust *res* held by the assignee. The buyer holds no particular fund which is turned over to his assignee. His obligation is only to pay out of his general substance. His assignee's only obligation is personal to him, the buyer, and therefore cannot be reached by the seller. The only right of the vendor or his assignee against the vendee's assignee, if he have the land without having paid the purchase price when due, is to have the land sold to satisfy the debt, as on the foreclosure of a mortgage.

§ 854. **Assignment of the Purchase-money Notes Transfers the Security.**—The vendor's interest when the purchase-money is unpaid in part or whole has frequently been

⁴⁴ Rathbone v. Groh (Mich.), 100 N. W. 588; Martin v. Thomas (W. Va.), 49 S. E. 118; Weaver v. Snively (Neb.), 102 N. W. 77; Flackhammer v. Himes, 24 R. I. 306, 53 Atl. 46; Hunter v. McDevitt (N. D.), 97 N. W. 869. See 2 Pom. Eq. Jur., § 767.

⁴⁵ Jackson's Case, Lane, 60. See 2 Pom. Eq. Jur., § 688.

said to be like the interest of a mortgagee.⁴⁶ Following out the analogy,⁴⁷ if an assignment is made of the purchase-money notes this operates in equity as a transfer of the security.⁴⁸ The vendor, though continuing to hold the legal title, holds it first in trust for the assignee of the notes as security for the purchase-money notes, and only after the satisfaction of that security, on a resulting trust for the vendee. The assignee of the notes may file a bill in equity to subject the estate to the payment of his debt, although there has been no assignment of the estate to him.⁴⁹

§ 855. **Vendor's Assignee in Bankruptcy Subject to Specific Performance.**—Where the vendor is bankrupt, if all the purchase-money has been paid, specific performance can be enforced against him, as he is a mere trustee, holding nothing but the bare legal title. But where the purchase-money has not all been paid, the vendor's assignee in bankruptcy holds the interest the vendor had in the lien on the land for the purchase-money, but specific performance can be had against the assignee in bankruptcy by joining him with the vendor. As the court in *Swepson v. Rouse*⁵⁰ puts it, the vendor was not a

⁴⁶ The vendor "carves out his own security, which is in the nature of a mortgage and to which all the essential incidents of a mortgage attach. . . . There cannot be a sensible distinction drawn between the case of a legal title conveyed to secure the payment of a debt and a legal title retained to secure payment": *Lowery v. Peterson*, 75 Ala. 109.

⁴⁷ For the effect of assigning the mortgage note, see 3 Pom. Eq. Jur., § 1210.

⁴⁸ *Gessner v. Palmateer*, 89 Cal. 89, 24 Pac. 608, 26 Pac. 789, 13 L. R. A. 187; *Graham v. McCampbell*, Meigs, 52, 33 Am. Dec. 126. Also, see *Stephens v. Chadwick*, 10 Kan. 406; *Hadley v. Nash*, 69 N. C. 162; *Church v. Smith*, 39 Wis. 492; *Lowery v. Peterson*, 75 Ala. 109. See, also, 3 Pom. Eq. Jur. (3d ed.), § 1261, notes 1 and (e).

⁴⁹ *Graham v. McCampbell*, Meigs, 52, 33 Am. Dec. 126.

⁵⁰ *Swepson v. Rouse*, 65 N. C. 34, 37, 6 Am. Rep. 735.

“mere naked trustee,” but “to secure the residue of the purchase-money, he had a lien on the land, which was an assignable interest upon his bankruptcy and necessarily passed to his assignee.”

§ 856. **Vendee's Assignee in Bankruptcy not Subject to Specific Performance.**—But the assignee of the vendee in bankruptcy, on the contrary, is not subject to specific performance of the contract.⁵¹ There is no reason why the vendor as a creditor should be preferred to other creditors. There is no trust *res* to be delivered, as in the case of the vendor's assignee in bankruptcy. The contract, however, is not discharged by the vendee's bankruptcy, and his assignees may at their option have specific performance of the contract against the vendor.⁵²

§ 857. **Waste by Vendee; by Vendor.**—The vendor's only interest in the use of the land he has contracted to sell is to have his security unimpaired so that it may satisfy the unpaid purchase-money. The vendee in possession is entitled to make any use of the property so long as he does not materially affect its value as security for the purchase-money. In order that the vendor may have an injunction to prevent waste, he must show that the vendee is lessening the value of the land so as to impair his security, and thus to injure his property,—the security.⁵³ The analogy to the mortgage is close. A

⁵¹ *Pearce v. Bastable*, [1901] L. R. 2 Ch. 122, 125.

⁵² *Brook v. Hewitt*, 3 Ves. 253 (the court said: “The bankruptcy was an assignment; if the party had made an actual assignment, the assignee would without doubt be entitled to a performance”).

⁵³ In *Moses v. Johnson*, 88 Ala. 517, 16 Am. St. Rep. 58, 7 South. 146, 147, the vendee was enjoined from felling timber, as it would impair the land as security, the court saying: “A vendor who sells on credit, retaining the title as security for the purchase money, sustains the same relation to the vendee, so far as the question of

mortgagee cannot maintain an action to restrain waste without showing that his security will be impaired.⁵⁴ Whether buildings annexed by the vendee subsequently to his taking possession can be removed by him is a point in conflict among the cases. The California courts hold that as the original security is not impaired by their removal, the vendee can remove them.⁵⁵ In Illinois it is held that the improvements, becoming permanently annexed to the land, cannot be removed.⁵⁶

Since in equity the real interest in the property is in the vendee, the vendor, though holding possession of the land, must not make other than ordinary use of the land, and he will be enjoined from committing waste, such as cutting trees, quarrying,⁵⁷ or removing soil.⁵⁸

§ 858. Vendor may be Liable as Trustee for Deterioration. This rule is well stated by Lord Coleridge: "During the interval prior to completion the vendor in possession is a trustee for the purchaser and as such has duties to perform towards him, not exactly the same as in the case of other trustees, but certain duties, one of which is to use reasonable care to preserve the property in a security is concerned, as does the mortgagee to the mortgagor." See, also, *Miller v. Waddingham*, 91 Cal. 377, 380, 27 Pac. 750, 13 L. R. A. 680.

⁵⁴ Lord Eldon, in *Crockford v. Alexander*, 15 Ves. 138. In this case the vendee obtained possession from the lessee of the vendor, and began to cut timber. Lord Eldon enjoined him from destroying the property as a trespasser, although in equity by his contract he was entitled to possession.

⁵⁵ *Miller v. Waddingham*, 91 Cal. 377, 391, 27 Pac. 750, 13 L. R. A. 680.

⁵⁶ *Smith v. Moore*, 26 Ill. 392.

⁵⁷ *Holmberg v. Johnson*, 45 Kan. 197, 25 Pac. 575 (in this case the vendor had the right by the contract to retain possession and use the land for five years. He was restrained from cutting timber and quarrying).

⁵⁸ *Clarke v. Ramuz*, [1891] L. R. 2 Q. B. 456.

reasonable state of preservation, and so far as may be, as it was when the contract was made";⁵⁹ or as Lord Kay expresses it, "To take reasonable care that the property is not deteriorated in the interval before completion."⁶⁰

§ 859. **Loss by Fire or Other Accident; Usually Falls on Vendee.**—Upon whom should the loss, as where the buildings are destroyed by fire, occurring between the date of the contract and the conveyance, fall? Following out the rule of equity that "as soon as the contract is finally *concluded*, although it is wholly executory in form,"⁶¹ there results by its operation an equitable conversion of the land and the purchase-money, and the purchaser then becomes the equitable owner of the land, the conclusion can hardly be escaped that the loss should fall on the vendee.⁶² Of course the risk of loss

⁵⁹ *Clarke v. Ramuz*, [1891] L. R. 2 Q. B. 456.

⁶⁰ *Ibid.* In *Phillips v. Sylvester*, L. R. 8 Ch. App. 173, it was held that a vendor who insisted on remaining in possession as further security was liable for deterioration of the property.

⁶¹ Pom. Eq. Jur., § 1406.

⁶² Loss on the vendee: *Osborn v. Nicholson*, 13 Wall. 654, 660, 20 L. ed. 689; *Columbian Ins. Co. v. Lawrence*, 2 Pet. 25, 46, 7 L. ed. 335; *Kuhn v. Freeman*, 15 Kan. 423 (a railroad obtained by eminent domain a right of way through lands contracted for by the vendee. Although the compensation allowed for the right of way was less than the damage to the property, the vendee was obliged by the court to bear the loss); *Marks v. Tichenor*, 85 Ky. 536, 4 S. W. 225 (the court said the loss would always fall upon the vendee except where it was due to the vendor's negligence, or where by express terms of the contract the vendor was to deliver possession of the land in the same situation in which it was at the time of making of the contract); *Willis v. Wozencroft*, 22 Cal. 608, 618; *Brewer v. Herbert*, 30 Md. 301, 96 Am. Dec. 582; *Phinzy v. Guernsey*, 111 Ga. 346, 78 Am. St. Rep. 207, 36 S. E. 796; *State Mut. Fire Ins. Co. v. Updegraff*, 21 Pa. St. 513, 519; *Davidson v. Hawkeye Ins. Co.*, 71 Iowa, 532, 60 Am. Rep. 818, 32 N. W. 514; *Goldman v. Rosenberg*, 116 N. Y. 78, 15 Am. St. Rep. 410, 22 N. E. 397 (court here acknowledged general rule that loss should fall on vendee, but

by special stipulation can be placed on either party; as where the vendor by his contract was to complete a certain building before vendee's taking possession, the inference is that loss would fall on the vendor.⁶³ Equity, from the moment the contract is binding, gives the vendee the entire benefit of the rise in value of the land and of all subsequent improvements, and any other advantage that may accrue to the estate. If the vendee is owner in equity so as to receive all increment, he should be considered owner so as to accept the burden of any loss not due to the vendor's fault. This was the view taken by Lord Eldon in *Paine v. Meller*,⁶⁴ which established the doctrine in England,⁶⁵ as a general rule of

said it did not apply to the case by the terms of the contract); *Skinner & Sons v. Houghton*, 92 Md. 68, 84 Am. St. Rep. 485, 48 Atl. 85; *Dunn v. Yakish*, 10 Okla. 388, 61 Pac. 926.

It has been held at law, in a number of cases, that the loss falls on the vendor: See *Thompson v. Gould*, 20 Pick. 134 (action at law by vendee to recover purchase price paid); *Wells v. Calnan*, 107 Mass. 514, 9 Am. Rep. 65 (action at law by vendor); *Gould v. Murch*, 70 Me. 288, 289, 35 Am. Rep. 325 (action at law by vendor); *Powell v. Dayton etc. R. R.*, 12 Or. 488, 8 Pac. 544; 14 Or. 356, 12 Pac. 665; 16 Or. 33, 8 Am. St. Rep. 251, 16 Pac. 863 (action at law); *Hallett v. Parker*, 68 N. H. 598, 39 Atl. 433; *Smith v. McClusky*, 45 Barb. 610 (but see *Goldman v. Rosenberg*, *supra*).

It has been suggested that a just and practical rule would be to make the loss fall upon the party in possession at the time: Professor Williston, in 9 Harv. Law Rev. 106. *Contra*, in favor of the accepted doctrine, see Professor Keener in 1 Columbia Law Rev. 1.

⁶³ *Counter v. Macpherson*, 5 Moore P. C. C. 83.

⁶⁴ *Paine v. Meller*, 6 Ves. 349, 1 P. Wms. 61. Lord Eldon there said: "If the party by the contract has become in equity the owner of the premises, they are his to all intents and purposes. They are vendible as his, chargeable as his; . . . they may be devised as his; they may be assets; and they would descend to his heir. If a man had signed a contract for a house upon that land which is now appropriated to the London Docks, and that house was burnt, it would be impossible to say to the purchaser, willing to take the land without the house, because much more valuable on account of this project, that he should not have it."

⁶⁵ *Robertson v. Skelton*, 12 Beav. 260 (here the vendor was in possession when certain of the buildings fell and damaged neigh-

equity, that all loss by fire or other accident shall fall on the vendee rather than on the vendor, after the vendor is in position to make a good title, or the vendee has accepted the title; in other words, as soon as the contract is capable of specific performance by the vendor.

§ 860. **Vendee Generally Entitled to the Insurance Money.** On principle it would seem clear that in all jurisdictions throwing the loss by fire on the vendee, the insurance money should go to the vendor in trust for the vendee, to be paid when the vendee should satisfy the security lien of the vendor. Such is the view of the American courts which have passed upon the question;⁶⁶ but in England, in a decision⁶⁷ very difficult to reconcile with the general equity doctrine of *Paine v. Meller*,⁶⁸ it was declared by a divided court that the

boring buildings of a third party. The liability for this damage was put upon the vendee, the court holding that "Any deterioration of the property arising from accident, as by fire, without fault of the vendor, falls upon the purchaser"); *Twigg v. Fifield*, 13 Ves. 513, 518 (but where the sale is through the court, as in case of a lunatic, the purchase is not complete until chancery has confirmed the report of its master for the sale, and up to the time of that confirmation the loss falls on the vendor); *Ex parte Minor*, 11 Ves. 559.

⁶⁶ *State Mut. Fire Ins. Co. v. Updegraff*, 21 Pa. St. 513; *Phinizy v. Guernsey*, 111 Ga. 346, 349, 78 Am. St. Rep. 207, 36 S. E. 796; *Skinner & Sons v. Houghton*, 92 Md. 68, 84 Am. St. Rep. 485, 48 Atl. 85. This same doctrine is ably supported by Lord Justice James in his dissent in *Rayner v. Preston*, L. R. 18 Ch. D. 1. He concludes: "It [the insurance money] reached the vendor's hands . . . as money which ought to be laid out in reinstating the premises, or, in other words, as money which the purchaser alone had any real or substantial interest in." This view is supported by the reason that the vendor is in reality, in most respects, a trustee for the vendee.

⁶⁷ *Rayner v. Preston*, L. R. 18 Ch. D. 1. One can only say of this case that it is a most extraordinary decision, whether viewed in the light of equitable principle or from the point of practical justice.

⁶⁸ *Paine v. Meller*, 6 Ves. 349.

vendee is not entitled to the insurance money, and by a later decision that the vendor himself must refund the money to the insurance company if paid to him.⁶⁹

§ 861. **Loss by Occurrence of Contingency on Vendee.**—By the same reasoning that casts the loss by fire on the vendee, is the loss by the happening of a contingency put upon the vendee. Thus, in *White v. Nutt*,⁷⁰ where one contracted for an estate for two lives, and one of the lives dropped prior to conveyance of the estate, the buyer was compelled to accept conveyance and bear the loss, for “in equity the estate is as conveyed from the time of the articles sealed.”⁷¹ The Lord Keeper doubted, however, had *all* the lives dropped, whether the vendee should have the loss on him, as, “no estate being left, there could be no conveyance.”⁷² But this *dictum* was properly overthrown in a later case where, the only life having dropped, the buyer was nevertheless compelled to pay the purchase price.⁷³ Similarly, where the agreement is for the purchase of an annuity for the vendee’s life, though the vendee die before the first sum be due, and the vendor will never have any annuity to pay, yet must the estate of the vendee pay the purchase price.⁷⁴

§ 862. **Foreclosure of Vendee’s Equity of Specific Performance.**—The analogy of the relation arising from the contract of sale and the mortgage relation serves equity again in tracing the right of the vendor to be freed from the vendee’s continuing right of specific performance

⁶⁹ *Castellain v. Preston*, L. R. 11 Q. B. D. 380.

⁷⁰ *White v. Nutt*, 1 P. Wms. 61.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Kenney v. Wexhan*, 6 Madd. 355.

⁷⁴ *Coles v. Trecothick*, 9 Ves. 234, 246; *Kenney v. Wexhan*, 6 Madd. 355, 357; *Jackson v. Lever*, 3 Bro. C. C. 605.

where the vendee himself will not pay the purchase-money. The vendee, who corresponds to the mortgagor, failing to pay the purchase-money, still has his equity of redemption; the vendor has neither his money nor the land, for he has hanging over him the vendee's right in equity to have the land, and has no power over the land other than that of a mortgagee, i. e., to hold it as security. But to do justice to the vendor, where the vendee fails to pay the purchase-money, equity allows a foreclosure of the vendee's right to have specific performance, analogous to the foreclosure of the mortgagor's equity of redemption. By the decree, the vendee is ordered within a reasonable fixed time, to pay the purchase-money, or to be forever foreclosed of his equity in the contract.⁷⁵

§ 863. **Sale of the Property, in Lieu of Strict Foreclosure.** Most jurisdictions in the United States, however, do not decree a strict foreclosure, but, instead, decree that if the purchase-money is not paid within a time set by the court, the property shall be sold, and the vendor's interest satisfied out of the proceeds.⁷⁶ This may be

⁷⁵ *Button v. Schroyer*, 5 Wis. 598 (a leading case on this point. The court says: "The relation between the parties is analogous to that of equitable mortgagor and mortgagee. The former has an equity of redemption, the latter the correlative right of foreclosure.") The lower court had given the usual decree for a foreclosure and sale, but the supreme court said as to the sale, "We think the decree of sale erroneous. The proper decree in such cases is, that the money due upon the contract be paid within such reasonable time as the court may direct, or that the vendee be foreclosed of his equity"); *Baker v. Beach*, 15 Wis. 108; *Keller v. Lewis*, 53 Cal. 113; *Fairchild v. Mullan*, 90 Cal. 190, 27 Pac. 201; *S. P. R. R. v. Allen*, 112 Cal. 455, 44 Pac. 796. See, also, *Pom. Eq. Jur.*, § 1262.

⁷⁶ *Burger v. Potter*, 32 Ill. 66. In *Keller v. Lewis*, 53 Cal. 113, the court decreed a foreclosure of the vendee's right to purchase, if he should not pay the purchase-money within a definite time, but added: "If the vendor obtains his money and his interest, he

treated as a forced sale of the vendee's equitable interest to satisfy the unpaid purchase-money, any balance accruing to the vendee.⁷⁷

gets all he expected when he entered into the contract." In *Denton v. Scully*, 26 Minn. 325, 4 N. W. 41, at page 326, the court thus refers to the ways of meeting the vendee's default: "A not unreasonable remedy would be to require the defendants [vendees] to pay as they have agreed to do, or to abandon the contract. Accordingly a court of equity not unfrequently administers this remedy by ascertaining the amount owing on the contract, by fixing the day by which the defendants are to pay it, and in default of such payment, declaring the contract forfeited, and restoring the plaintiff to possession; or if, upon a consideration of the circumstances of the case and the interests of all parties concerned, it appears more just and equitable, to direct a sale of defendant's interests in the bonded lands, or in some instances a sale of the land itself, and the application of the proceeds to the payment of the defendant's liabilities under the contract." The same rule was applied in *Thomson v. Smith*, 63 N. Y. 301; *Walker v. Casgrain*, 101 Mich. 604, 608, 60 N. W. 291; *Huffman v. Cauble*, 86 Ind. 591; *Martin v. O'Bannon*, 35 Ark. 62; *Lewis v. Boskins*, 27 Ark. 61; *Hester v. Hunnicutt*, 104 Ala. 282, 287, 16 South. 162.

⁷⁷ *Abbott v. Moldestead*, 74 Minn. 293, 299, 73 Am. St. Rep. 348, 77 N. W. 227 (court said its decree would operate as a sale or assignment of the vendee's equitable interest and not a cancellation of the contract).

CHAPTER XLIII.

SUITS TO COMPEL TRANSFER OR ISSUE OF STOCK.

ANALYSIS.

§ 864. Suits against corporations to compel the transfer or issue of stock.

§ 864. Suits Against Corporations to Compel the Transfer or Issue of Stock.—“Cases frequently arise where corporations or joint-stock companies refuse to recognize the rights of assignees of stock, and make the transfers on their books and issue new certificates in place of the old ones presented, or where certificates have been presented to the company without the owner’s consent and negligence, and new certificates have been issued instead thereof to others purporting to be entitled thereto.”¹ In some jurisdictions the legal writ of *mandamus* is available to a party seeking relief from such refusal;² but generally it is held that this writ is not proper.³

1 Pom. Eq. Jur., § 1412. This section of Pom. Eq. Jur. is quoted in *Birmingham Nat. Bank v. Roden*, 97 Ala. 404, 11 South. 883.

2 *Hair v. Burnell*, 106 Fed. 280; *People v. Crockett*, 9 Cal. 112; *People v. Goss*, 99 Ill. 355; *State v. First Nat. Bank*, 89 Ind. 302; *Slemmons v. Thompson*, 23 Or. 215, 31 Pac. 514.

3 *Stackpole v. Seymour*, 127 Mass. 104 (no public interest or corporate right is in question); *State v. Rombauer*, 46 Mo. 155; *State v. Warren Foundry*, 32 N. J. L. 439; *Shipley v. Mechanics’ Bank*, 10 Johns. 484. See, also, *Townes v. Nichols*, 73 Me. 515 (weight of authority said to favor this view; court refused to commit itself). “*Mandamus* is not well adapted to the trial of questions of fact or the determination of controversies of a strictly private nature. Its office is rather to command and enforce the performance of those duties in which the public have some concern, and where the right is clear, and does not depend upon a complication of disputed facts which must be settled from the conflicting testimony of witnesses”: *State v. Carpenter*, 51 Ohio St. 83, 46 Am. St. Rep. 556, 37 N. E. 261.

The commonest remedies are that in equity and that at law for damages. In the first case mentioned above, equity has jurisdiction to compel the corporation to make the transfer and issue new certificates to the lawful assignee.⁴ If this relief cannot be given, equity may award damages instead; in fact, it is frequently said that alternative relief may be given.⁵ In the second class, equity may "decree that the corporation replace the stock upon its books, and issue new certificates to the original owner, or if it is unable to do this by

⁴ *Mechanics' Bank v. Seton*, 1 Pet. 299, 7 L. ed. 152 (the remedy at law in such a case is not clear and perfect); *Wilson v. Atlantic & St. L. R. Co.*, 2 Fed. 459; *Thornton v. Martin*, 116 Ga. 115, 42 S. E. 348; *Real Estate Trust Co. v. Bird*, 90 Md. 229, 44 Atl. 1048; *Iasigi v. Chicago etc. R. R.*, 129 Mass. 46; *Scherck v. Montgomery*, 81 Miss. 426, 33 South. 507; *Archer v. American Waterworks Co.*, 50 N. J. Eq. 33, 24 Atl. 508; *Middlebrook v. Merchants' Bank*, 41 Barb. 481, 3 Abb. Dec. 295; *Iron R. R. Co. v. Fink*, 41 Ohio St. 321, 52 Am. Rep. 84 (as incidental to other equitable relief); *Feckheimer v. Nat. Exch. Bank*, 79 Va. 80. "To say that the holder shall not be entitled to the stock, because the corporation, without any just reason, refuses to transfer it, and that he shall be left to pursue the remedy of an action for damages, in which he can recover only a nominal amount, would establish a rule which must work great injustice in many cases, and confer a power on corporate bodies which has no sanction in the law. A court of equity will enforce a specific performance on a contract for the sale of real estate, and compel the execution of a deed by the vendor to the vendee, although an action at law may be brought to recover damages for the breach of the contract. Such a case bears a striking analogy to the one now presented, and the same principle is manifestly applicable where the remedy at law is inadequate to furnish the proper relief": *Cushman v. Thayer Mfg. Co.*, 76 N. Y. 365, 32 Am. Rep. 315. It has been said that the court compels an issuance of certificates, not of shares: *Burnall v. Bushwick R. R.*, 75 N. Y. 211.

⁵ *Birmingham Nat. Bank v. Roden*, 97 Ala. 404, 11 South. 883; *State v. Carpenter*, 51 Ohio St. 83, 46 Am. St. Rep. 556, 37 N. E. 261. To the effect that the decree should not be conditional, and that damages should not be awarded until it appears that the specific relief cannot be granted, see *Consolidated Min. & P. Co. v. Huff*, 62 Kan. 405, 63 Pac. 442. In general, see *In re Reading Iron Works*, 149 Pa. St. 182, 24 Atl. 202.

reason of its not having or being able to procure any shares, to pay the value of the stock.”⁶ As incidental to this relief, an account may be taken of dividends paid.⁷ When necessary, an injunction may issue in aid of the remedy in either class of cases.⁸

⁶ Pom. Eq. Jur., § 1412. See, also, *Hildyard v. South Sea Co.*, 2 P. Wms. 77; *Ashby v. Blackwell*, 2 Eden, 299; *Blaisdell v. Bohr*, 68 Ga. 56; *Chew v. Bank of Baltimore*, 14 Md. 299 (sale of stock by lunatic); *Sewall v. Boston etc. Co.*, 4 Allen, 277, 81 Am. Dec. 701; *Pratt v. Taunton Copper Co.*, 123 Mass. 110, 25 Am. Rep. 37; *Pratt v. Boston & Albany R. Co.*, 126 Mass. 443; *Pollock v. National Bank*, 7 N. Y. 274, 57 Am. Dec. 520. The cases under this head almost invariably arise where the owner's name has been forged. It is no answer that the officers of the company have been without blame in allowing the unauthorized transfer, or that the certificate was obtained by a purchaser in good faith: *Western Union Tel. Co. v. Davenport*, 97 U. S. 369, 24 L. ed. 1047.

⁷ *Hildyard v. South Sea Co.*, 2 P. Wms. 77; *Ashby v. Blackwell*, 2 Eden, 299; *Blaisdell v. Bohr*, 68 Ga. 56; *Pollock v. National Bank*, 7 N. Y. 274, 57 Am. Dec. 520.

⁸ *Thornton v. Martin*, 116 Ga. 115, 42 S. E. 348.

CHAPTER XLIV.

MARSHALING OF SECURITIES.

ANALYSIS.

- § 865. In general.
- § 866. Paramount encumbrancer must not be inconvenienced.
- § 867. Rights of third parties must not be prejudiced.
- § 868. Rule applicable only between creditors of one debtor.
- § 869. Homesteads.
- § 870. Relief given.

§ 865. In General.—“The equitable remedy of marshaling securities, with that of marshaling assets, depends upon the principle that a person having two funds to satisfy his demands shall not, by his election, disappoint a party having but one fund. The general rule is, that if one creditor, by virtue of a lien or interest, can resort to two funds, and another to one of them only,—as, for example, where a mortgagee holds a prior mortgage on two parcels of land, and a subsequent mortgage on but one of the parcels is given to another,—the former must seek satisfaction out of that fund which the latter cannot touch.”¹ The right is

¹ Pom. Eq. Jur., § 1414. This section of Pom. Eq. Jur. is quoted in *Clark v. Wright*, 24 S. C. 526; *Farwell v. Bigelow*, 112 Mich. 289, 70 N. W. 579; *Gilliam v. McCormack*, 85 Tenn. 597, 4 S. W. 521; *Wyman v. Fort Dearborn Nat. Bank*, 181 Ill. 279, 72 Am. St. Rep. 259, 54 N. E. 946, 48 L. R. A. 565; and cited in *Quinnipiac Brewing Co. v. Fitzgibbons*, 73 Conn. 191, 47 Atl. 128; *Rownd v. State*, 152 Ind. 39, 51 N. E. 914, 52 N. E. 395; *Paddock-Hawley Iron Co. v. McDonald*, 61 Mo. App. 559; *White v. Fulghum*, 87 Tenn. 281, 10 S. W. 501; *Wahrmund v. Edgewood Distilling Co.* (Tex. Civ. App.), 32 S. W. 227. In general, see *Ex parte Kendall*, 17 Ves. 514, 520; *Covington City Nat. Bank v. Commercial Bank*, 65 Fed. 547; *Gusdorf v. Ikelheimer*, 75 Ala. 148; *Terry v. Rosell*, 32 Ark. 378; *Ross v. Duggan*, 5 Colo. 85; *Boone v. Clark*, 129 Ill. 466, 21 N. E. 850, 5 L.

purely equitable and cannot be asserted at law, except where it is incidental to an equitable defense permitted in a legal action.² It is to be observed that the prior creditor cannot be compelled to give up either of his securities until his debt is paid.³ "The operation of the principle is not affected by the nature of the property which constitutes the double fund, but applies wherever a paramount creditor holds collateral security, or can resort collaterally to other real or personal estate for the satisfaction of the debt."⁴ "The rules of marshaling securities are applied under a variety of circumstances; but generally, in this country, between mortgagees, mortgagees and judgment creditors, and between judgment creditors."⁵

R. A. 276; Equitable Mortgage Co. v. Lowe, 53 Kan. 39, 35 Pac. 829; Whittaker v. Amwell Nat. Bank, 52 N. J. Eq. 400, 29 Atl. 203; Evertson v. Booth, 19 Johns. 486, 492; Besley v. Lawrence, 11 Paige, 581; Ziegler v. Long, 2 Watts, 205; Willis v. Holland, 13 Tex. Civ. App. 689, 36 S. W. 329; Hudson v. Dismukes, 77 Va. 242. See, also, cases cited in following notes.

2 Barlow v. Britton, 70 Miss. 427, 12 South. 460; Johnson v. Moyse (Miss.), 12 South. 483; Cain v. Moyse, 71 Miss. 653, 15 South. 115.

3 Union Bank of Georgetown v. Laird, 15 U. S. (2 Wheat.) 390, 4 L. ed. 269.

4 Ross v. Duggan, 5 Colo. 85. See, also, Gusdorf v. Ikelheimer, 75 Ala. 148.

5 Pom. Eq. Jur., § 1414. In the following cases the rule was applied between mortgagees: Aldrich v. Cooper, 8 Ves. 382, 395, 2 Lead. Cas. Eq., 4th Am. ed., 2280, notes; Tidd v. Lister, 10 Hare, 140, 157, 3 De Gex, M. & G. 857; Gibson v. Seagrim, 20 Beav. 614; Russell v. Howard, 2 McLean, 489, Fed. Cas. No. 12,156; York etc. Ferry Co. v. Jersey Co., Hopk. Ch. 460. See, also, G. Ober & Sons Co. v. Keating, 77 Md. 100, 26 Atl. 501.

Between mortgagee and judgment creditor: Bank of Commerce v. First Nat. Bank, 150 Ind. 588, 50 N. E. 566; State Sav. Bank v. Harbin, 18 S. C. 425.

Miscellaneous: Kendig v. Landis, 135 Pa. St. 612, 19 Atl. 1058 (between judgment creditor and holder of mechanic's lien); Bruce v. Laing (Tex. Civ. App.), 64 S. W. 1019.

§ 866. **Paramount Encumbrancer Must not be Inconvenienced.**—Relief will not be given if it will delay or inconvenience the paramount encumbrancer in the collection of his debt, or prejudice him in any manner; for it would be unreasonable that he should suffer because some one else has taken imperfect security.⁶ Thus, relief has been denied where the fund to be resorted to has been dubious, or one which might involve the creditor in litigation;⁷ and a mere personal remedy has been held insufficient to warrant interference.⁸ In

“When creditor No. 1 has a lien upon two funds, A and B, and creditor No. 2 has a subsequent lien upon fund B alone, the theory of the remedy is, that the lien of creditor No. 2 is transferred to and enforced against fund A. It is possible that some cases may have carried the principle to the extent of permitting creditor No. 2 to maintain an equitable suit for the purpose of compelling creditor No. 1 to enforce his security, in the first place, out of fund A, so as to leave fund B, if possible, subject to the plaintiff’s subsequent lien. This form of the relief is not, in my opinion, warranted by the principle; it was not allowed in the analogous remedy of marshaling assets; and it seems to interfere with the prior vested rights of creditor No. 1”: Pom. Eq. Jur., § 1414, note.

⁶ Pom. Eq. Jur., § 1414. This portion of Pom. Eq. Jur. is quoted in *Farwell v. Bigelow*, 112 Mich. 285, 70 N. W. 579; *Clark v. Wright*, 24 S. C. 526; *Ohio Cultivator Co. v. People’s Nat. Bank*, 22 Tex. Civ. App. 643, 55 S. W. 765; and cited to this effect in *Boone v. Clark*, 129 Ill. 466, 21 N. E. 850, 5 L. R. A. 276; *Wilkes v. Adler*, 68 Tex. 689, 5 S. W. 497; *Wahrmund v. Edgewood Distilling Co.* (Tex. Civ. App.), 32 S. W. 227; *Gotzian v. Shakman*, 89 Wis. 52, 46 Am. St. Rep. 820, 61 N. W. 304. See, also, *Marr v. Lewis*, 31 Ark. 203, 25 Am. Rep. 553; *Friedlander v. Fenton*, 180 Ill. 312, 72 Am. St. Rep. 207, 54 N. E. 329 (affirming *Heidelberg v. Fenton*, 79 Ill. App. 357); *Sweet v. Redhead*, 76 Ill. 374; *General Ins. Co. v. United States Ins. Co.*, 10 Md. 517, 69 Am. Dec. 174; *Briggs v. Planters’ Bank, Freem. (Miss.)* 574; *People v. Remington*, 121 N. Y. 328, 24 N. E. 793, 8 L. R. A. 458; *Evertson v. Booth*, 19 Johns. 486, 492; *Witte v. Clarke*, 17 S. C. 313; *Hudkins v. Ward*, 30 W. Va. 204, 8 Am. St. Rep. 22, 3 S. E. 600.

⁷ *Walker v. Covar*, 2 S. C. 16.

⁸ *Palmer v. Snell*, 111 Ill. 161. See, also, *Wolf v. Smith*, 36 Iowa, 454 (necessity to resort to many promissory notes of different individuals will prevent relief).

some jurisdictions it is held that a creditor who has adequate security within the state cannot be compelled to resort to property elsewhere;⁹ while in others the fact that a portion of the security is situated elsewhere is held to be immaterial.¹⁰ It would seem that a creditor should not be compelled to resort to property in a foreign country unless it is made to appear that he will not be prejudiced thereby.¹¹ It is sometimes said that the creditor seeking the relief must show, and make it clearly appear, that the rights of his co-creditor will neither be injured nor injuriously delayed.¹²

§ 867. Rights of Third Parties Must not be Prejudiced.—Relief will not be given if it will prejudice the rights of third persons.¹³ The question frequently arises when there are more than two liens to be adjusted. For instance, a third mortgage may be given, covering property included in the first but not in the second. To compel a marshaling of securities would prejudice the rights of this third party. The right to marshaling being a mere equity and not a lien, it is generally held that it is subject to displacement and defeat by subsequently acquired liens upon the funds.¹⁴ This is more

⁹ *Calloway v. People's Bank*, 54 Ga. 572; *Denham v. Williams*, 39 Ga. 312.

¹⁰ *Willey v. St. Charles Hotel Co.*, 52 La. Ann. 1581, 28 South. 182; *York etc. Ferry Co. v. Jersey Co.*, Hopk. Ch. 460.

¹¹ *Farwell v. Bigelow*, 112 Mich. 285, 70 N. W. 579.

¹² *General Ins. Co. v. United States Ins. Co.*, 10 Md. 517, 69 Am. Dec. 174; *Watkins v. Worthington*, 2 Bland, 531; *Worthington v. Craddock*, 3 Bland, 514, note.

¹³ *Averall v. Wade*, Lloyd & G. 252; *Marr v. Lewis*, 31 Ark. 203, 25 Am. Rep. 553; *Georgia Chem. Works v. Cartledge*, 77 Ga. 547, 4 Am. St. Rep. 96; *Cannon v. Kreipe*, 14 Kan. 324; *Leib v. Stribling*, 51 Md. 285; *Herbert v. Mechanics' B. & L. Assn.*, 17 N. J. Eq. 497, 90 Am. Dec. 601; *Ziegler v. Long*, 2 Watts, 205; *White v. Fulghum*, 87 Tenn. 281, 10 S. W. 501.

¹⁴ *Gilliam v. McCormack*, 85 Tenn. 597, 4 S. W. 521. See, also, *Harron v. Du Bois*, 64 N. J. Eq. 657, 54 Atl. 857.

clearly so when the subsequent lien is acquired without actual knowledge of the facts.¹⁵

§ 868. Rule Applicable Only Between Creditors of One Debtor.—In order to obtain the relief, the parties must be creditors of the same debtor, and both funds must belong to one debtor.¹⁶ Accordingly, it is generally held that there can be no marshaling as between the debtor and creditor;¹⁷ nor is the doctrine applicable as between a purchaser of an equity of redemption and a prior mortgagee.¹⁸ The same principle prevents the application of the rule as against a mere surety.¹⁹

§ 869. Homesteads.—The doctrine of marshaling will not be applied so as to work an injustice to the debtor. Consequently, it is generally held that it cannot be invoked to compel a creditor to resort to a homestead in the first instance.²⁰ The object of the exemption is to

¹⁵ *Webb v. Hunt*, 2 Ind. Ter. 612, 53 S. W. 437.

¹⁶ *Carter v. Neal*, 24 Ga. 346, 71 Am. Dec. 136; *Boone v. Clark*, 129 Ill. 466, 724, 21 N. E. 850, 5 L. R. A. 276 (citing Pom. Eq. Jur., § 1414); *Rogers v. Blum*, 56 Tex. 1; *Blakemore v. Wise*, 95 Va. 269, 64 Am. St. Rep. 781, 28 S. E. 332.

¹⁷ *Rogers v. Meyers*, 68 Ill. 92; *Plain v. Roth*, 107 Ill. 588. In some jurisdictions an exception is made in favor of a homestead claimant. See § 869.

¹⁸ *Stevens v. Church*, 41 Conn. 369. See, also, *Miller v. Cook*, 135 Ill. 190, 25 N. E. 756, 10 L. R. A. 292; *Scharff v. Meyer*, 133 Mo. 428, 54 Am. St. Rep. 672, 34 S. W. 858.

¹⁹ *Ex parte Kendal*, 17 Ves. 520; *Swift & Co. v. Kortrecht*, 112 Fed. 709, 50 C. C. A. 429; *Trentman v. Eldridge*, 98 Ind. 525; *In re Hobson*, 81 Iowa, 392, 46 N. W. 1095, 11 L. R. A. 255; *Woollen v. Hillen*, 9 Gill, 185, 52 Am. Dec. 690; *Dorr v. Shaw*, 4 Johns. Ch. 17; *Hall v. Hyer*, 48 W. Va. 353, 37 S. E. 594.

²⁰ *First Nat. Bank v. Browne*, 128 Ala. 557, 86 Am. St. Rep. 156, 29 South. 552; *Marr v. Lewis*, 31 Ark. 203, 25 Am. Rep. 553; *Dickson v. Chorn*, 6 Iowa, 19, 71 Am. Dec. 382; *Frick Co. v. Ketels*, 42 Kan. 527, 16 Am. St. Rep. 507, 22 Pac. 580; *Ralls v. Prather*, 21 Ky. Law Rep. 555, 52 S. W. 800 (denying rehearing of 51 S. W. 318); *Armitage v. Toll*, 64 Mich. 412, 31 N. W. 408 ("the law ex-

protect the debtor and his family. If a creditor without a lien were allowed to compel its application upon a prior claim, the right might be practically valueless. Some cases even go so far as to allow the debtor a right to compel the mortgagee to resort first to the other property covered by the mortgage;²¹ but while much may be said in favor of the justice of this rule, it would seem in conflict with the general principle that only creditors can compel marshaling of securities. In a few jurisdictions it is held that a creditor may compel marshaling even as against a homestead claim.²²

§ 870. Relief Given.—The right to have securities marshaled is not a lien; but neither is it a mere incident to the remedy. The right is not generally enforced by an independent action, but it exists and may be asserted whenever an opportunity is afforded.²³ Questions frequently arise when the prior lienholder releases property upon which he alone has a lien, or satisfies his claim in full out of property on which both

excludes the homestead from all remedies of creditors in all courts, and the power of the creditor against the will of the owner is absolutely subverted''; *McArthur v. Martin*, 23 Minn. 74; *Koen v. Brill*, 75 Miss. 870, 65 Am. St. Rep. 633, 23 South. 481 (to allow such procedure would work a gross injustice); *Mitchelson v. Smith*, 28 Neb. 583, 26 Am. St. Rep. 357, 44 N. W. 871; *Wilson v. Patton*, 87 N. C. 318. Where, however, the homestead claimant sells the other property covered by the mortgage, the homestead becomes the primary fund for payment: *Merchants' Nat. Bank v. Stanton*, 55 Minn. 211, 43 Am. St. Rep. 491, 56 N. W. 821.

²¹ *Frick Co. v. Ketels*, 42 Kan. 527, 16 Am. St. Rep. 507, 22 Pac. 580. See, also, *Miller v. McCarty*, 47 Minn. 321, 28 Am. St. Rep. 375, 50 N. W. 235 (citing authorities on both sides).

²² *White v. Polleys*, 20 Wis. 503, 91 Am. Dec. 432; *State Sav. Bank v. Harbin*, 18 S. C. 425; *People's Bank v. Brice*, 47 S. C. 134, 24 S. E. 1038. It is held in South Carolina, however, that a mere general creditor cannot compel marshaling: *Pearson v. Pearson*, 59 S. C. 367, 82 Am. St. Rep. 846, 37 S. E. 917.

²³ *Bank of Orangeburg v. Kohn*, 52 S. C. 120, 29 S. E. 625.

have liens. Of course if the remaining property is sufficient to satisfy both liens, no complaint can be made.²⁴ Where it is not sufficient, and the other property is released without a satisfaction of the debt, it is held that the subsequent lienholder is entitled to a preference in payment, to the extent of the amount which should have been realized upon the property released.²⁵ Where the claim is satisfied out of the property upon which there is a common lien, the junior creditor has been allowed a substitution, or a decree for subrogation, or an assignment of the rights of the prior lienor.²⁶ In some instances an injunction may issue to protect the second claimant in the assertion of his right.²⁷

²⁴ *Blanchette v. Farsch* (S. D.), 99 N. W. 79; *Avery v. Popper* (Tex. Civ. App.), 45 S. W. 951; *Kelley v. Whitney*, 45 Wis. 110, 30 Am. Rep. 697.

²⁵ *Gore v. Royse*, 56 Kan. 771, 44 Pac. 1053; *Glass v. Pullen*, 6 Bush, 346; *McConnell v. Muldoon*, 30 Abb. N. C. 352, 24 N. Y. Supp. 902.

²⁶ *Cheesebrough v. Millard*, 7 Johns. Ch. 409, 7 Am. Dec. 494 (entitled to have prior lien assigned to him); *Hunt v. Townsend*, 4 Sandf. Ch. 510 (entitled to substitution); *Herriman v. Skillman*, 33 Barb. 378 (subrogation); *Jones v. Zollicoffer*, 9 N. C. 623, 11 Am. Dec. 795 (entitled to have prior lien assigned to him); *Appeal of Ramsey*, 2 Watts, 228, 27 Am. Dec. 301 (same); *Hudkins v. Ward*, 30 W. Va. 204, 8 Am. St. Rep. 22, 3 S. E. 600 (subrogation).

²⁷ *Nuzum v. Morris*, 25 W. Va. 559.

CHAPTER XLV.

CREDITORS' SUITS.

ANALYSIS.

- § 871. In general.
- §§ 872-874. Adequacy of legal remedy.
- § 872. In general—Supplementary proceedings.
- § 873. In case of fraudulent conveyance, other remedies are inadequate.
- § 874. But complainant must show the necessity of setting aside the fraudulent conveyance.
- § 875. Discovery of assets.
- §§ 876-881. What property may be reached.
- § 876. Intangible property.
- § 877. Choses in action.
- § 878. Contingent interests.
- § 879. Equitable interests.
- § 880. Fraudulent transfers of personalty may be set aside.
- § 881. Property which cannot be reached by the suit.
- §§ 882-888. How far the legal remedies must be first pursued.
- § 882. Necessity for judgment at law—Statutes changing the rule.
- § 883. What judgment is sufficient.
- § 884. When judgment may be dispensed with.
- § 885. Is an attachment lien sufficient to support a creditor's bill?
- § 886. Steps beyond judgment—In suits to reach assets not subject to execution.
- § 887. Same—In suits to remove fraudulent obstructions.
- § 888. What is a sufficient return of execution.
- § 889. Limitations and laches.
- § 890. Who may bring suit.
- § 891. Parties defendant.
- § 892. Joinder of parties plaintiff; one creditor suing in behalf of others.
- § 893. Creditor suing for himself obtains priority.
- § 894. Except in certain suits, where a trust or *quasi-trust* exists for all creditors.
- § 895. When the lien of the creditor's bill accrues.

§ 871. *In General.*—"The jurisdiction of equity to entertain suits in aid of creditors¹ undoubtedly had its origin in the narrowness of the common-law remedies by writs of execution. These writs, issued by courts of common law, besides being otherwise limited in their operation, were, of course, confined to those estates and interests recognized by the law, and did not extend to estates and interests equitable in their nature. Creditors' suits were therefore permitted to be brought in those instances where the relief by execution at common law was ineffectual; as for a discovery of assets;² to reach equitable and other interests not subject to levy and sale at law;³ and to set aside fraudulent conveyances and obstructions.⁴ Statutes in England and in certain American states have greatly extended the scope of writs of execution, thereby providing for adequate legal relief in cases where formerly resort to equity was necessary, and even extending the relief to instances where, perhaps, a creditor's bill would not lie.⁵ In

1 "Creditors' suits may be brought either while the debtor is living, or after his death against his estate. In the latter case, the suit ends in administration, if the executor or administrator does not admit assets. If assets are admitted, a decree is simply made for payment of the debt. The jurisdiction of equity to entertain suits of this latter class has been considered under the head of Administration [see Pom. Eq. Jur., § 1154]. The present discussion will be confined to suits of the first class": Pom. Eq. Jur., § 1415, note.

2 See *post*, § 875.

3 See *post*, §§ 876-879.

4 See *post*, §§ 873, 880, 887.

5 "In England, by the statute of frauds, 29 Car. II, c. 3, sec. 10, legal execution was given against the lands, tenements, and hereditaments of a person seised in trust for the debtor at the time of execution sued out. This exception to the property capable of being reached by the ordinary writs was obviously very narrow,—extending only to real estate seised in trust at the *time* of execution sued out, and not embracing chattels real, trusts under which the debtor had not the whole interest, equities of redemption, or any

other states, statutes have increased the efficiency of creditors' suits by dealing with the subject directly."⁶

§ 872. **Adequacy of Legal Remedy—In General—Supplementary Proceedings.**—It is a necessary result from the whole theory of the creditors' suits that jurisdiction in equity will not be entertained where there is a remedy at law;⁷ but such remedy, in order to oust and prevent jurisdiction in equity, must be in all respects as satisfactory as the relief furnished by a court of equity.⁸ The question has frequently arisen whether certain statutory remedies have not provided an adequate remedy for the creditor;⁹ especially, whether the proceedings "supplemental" or "supplementary" to execution existing in many of the states have not rendered the suit in equity unnecessary and obsolete. The question should be solved in accordance with the well-established principle that "where new power is conferred upon the law courts by statutory legislation, . . . unless the statute contains negative words or other language expressly taking away the pre-existing equitable jurisdic-

equitable interest parted with before execution sued out: See *Forth v. Duke of Norfolk*, 4 Madd. 503. By statute 1 & 2 Vict., c. 110, the remedies of creditors by ordinary writs of execution are very complete. As an example of the legislation in American states of the first type referred to in the text, see Cal. Code Civ. Proc., sec. 688": Pom. Eq. Jur., § 1415, note.

⁶ Pom. Eq. Jur., § 1415. For cases under such statutes, see *post*, § 882.

⁷ Pom. Eq. Jur., § 1415; see, also, *Id.*, §§ 279, 280.

⁸ *Mann v. Appel*, 31 Fed. 378, citing Pom. Eq. Jur., § 297; *Sabin v. Anderson*, 31 Or. 487, 49 Pac. 870.

⁹ That a creditor's bill must show that there was not an adequate remedy by garnishment, see *Meier v. Waco State Bank* (Tex. Civ. App.), 27 S. W. 881. Statutory proceeding in Massachusetts enabling assignee in insolvency to recover the value of property fraudulently conveyed, etc., by the insolvent renders unnecessary a suit by such assignee to set aside a fraudulent execution: *Ames v. Sheehan*, 161 Mass. 274, 37 N. E. 199.

tion, or unless the whole scope of the statute, by its reasonable construction and its operation, shows a clear legislative intent to abolish that jurisdiction, the former jurisdiction of equity to grant its relief under the circumstances continues unabridged."¹⁰

Creditors' suits which have for their object the setting aside of fraudulent conveyances have not been supplanted by supplemental proceedings.¹¹ "It seems to have been the intention of the framers of that statute [creating supplemental proceedings] to provide a summary process for the discovery, and application to the judgment, of property subject to execution, concealed and withheld by the debtor, or others in collusion with him, without pretending, when it came to a test under oath, to assert any substantial ground therefor. But where the property alleged to belong to the judgment debtor is claimed by others, either by way of absolute title or pledge or mortgage, or debts claimed to be owing to the judgment debtor are disputed by his alleged debtor, such claims of ownership, lien, or denial of indebtedness cannot be adjudicated and determined summarily."¹² Further, a creditor's bill may still be re-

¹⁰ Pom. Eq. Jur., § 279, quoted and followed in *Sabin v. Anderson*, 31 Or. 487, 49 Pac. 870.

¹¹ *Vansickle v. Shenk*, 150 Ind. 431, 50 N. E. 381, though such proceedings might have reached notes held by the grantor for the purchase-money for the land conveyed; *Rhodes v. Green*, 36 Ind. 7; *Ryan v. Maxey*, 14 Mont. 81, 35 Pac. 515; *Feldenheimer v. Tressel*, 6 Dak. 265, 43 N. W. 94, reviewing authorities; *Gere v. Dibble*, 17 How. Pr. 31 (even after appointment of receiver in supplementary proceedings); *Bennett v. McGuire*, 58 Barb. 625 (even after plaintiff has commenced supplementary proceedings); *Matlock v. Babb*, 31 Or. 516, 49 Pac. 873; *Rapp v. Whittier*, 113 Cal. 429, 45 Pac. 703; *Swifts v. Arents*, 4 Cal. 390; *Lewis v. Chamberlain*, 108 Cal. 525, 41 Pac. 413; *Gordon v. Lemp*, 7 Idaho, 677, 65 Pac. 444; *Koechl v. Leibinger & Oehm Brew. Co.*, 50 N. Y. Supp. 568, 26 App. Div. 573; *Anderson v. Provident Life & Trust Co.*, 25 Wash. 20, 64 Pac. 933.

¹² *Ryan v. Maxey*, 14 Mont. 81, 35 Pac. 515. To the same effect, see *Feldenheimer v. Tressel*, 6 Dak. 265, 43 N. W. 94; *Matlock v.*

sorted to for the purpose of reaching equitable interests;¹³ and it has been maintained that it will lie, in a suitable case, for the purpose of discovering and reaching concealed assets.¹⁴ It is obvious that *dicta*¹⁵ to the effect that creditor's bills can only be pursued in "exceptional" cases are careless and wholly misleading.

§ 873. **In Case of Fraudulent Conveyance, Other Remedies are Inadequate.**—Legal remedies for reaching property conveyed in fraud of creditors are rarely adequate. Though the conveyance may be utterly void, and the property liable to seizure and sale on execution, the execution purchaser receives a title clouded by the apparent title of the fraudulent grantee. "The legal remedy is slow and expensive compared with the equitable, and much more hazardous. In the legal procedure the method is circuitous. An action must be pushed to judgment and execution, a seizure or levy made, and then another action instituted to settle the title of the property so attached or seized. Equity settles all questions with all parties in a single suit."¹⁶ The remedies

Babb, 31 Or. 516, 49 Pac. 873. Supplementary proceedings may well be an exclusive remedy where it is merely sought to reach a debt owing to the judgment debtor, as in *Herrlich v. Kaufmann*, 99 Cal. 271, 37 Am. St. Rep. 50, 33 Pac. 857. See, also, *Matteson & Williamson Mfg. Co. v. Conley*, 144 Cal. 483, 77 Pac. 1042.

¹³ *Feldenheimer v. Tressel*, 6 Dak. 265, 43 N. W. 94; *Catlin v. Doughty*, 12 How. Pr. 457.

¹⁴ *South Bend Log Mfg. Co. v. Pierre F. & M. Ins. Co.*, 4 S. D. 173, 56 N. W. 98; *Hart v. Albright*, 18 N. Y. Supp. 718, 28 Abb. N. C. 74.

¹⁵ As in *Herrlich v. Kaufmann*, 99 Cal. 271, 276, 37 Am. St. Rep. 50, 33 Pac. 857. The California cases cited by the learned judge establish no such rule.

¹⁶ *Brown v. J. Wayland Kimball Co.*, 84 Me. 492, 24 Atl. 1007, by Peters, C. J. "Although the property might be sold in its present situation on the execution at law, yet equity will not require the creditor to sell a doubtful or obstructed title at law, but will set aside the conveyance and remove the obstructions to a fair

under the attachment and garnishment laws are not as adequate and efficient to reach property conveyed or transferred in fraud of creditors as is the remedy in equity.¹⁷

§ 874. **But Complainant Must Show the Necessity of Setting Aside the Fraudulent Conveyance.**—It is usually held, however, that the judgment creditor has no ground for interfering with the fraudulent conveyance, if at the time when the creditor's suit is brought the debtor has other property subject to execution sufficient to discharge the debt.¹⁸ "If his debt can be satisfied out of property

sale": *Vasser v. Henderson*, 40 Miss. 519, 90 Am. Dec. 351; *Weingarten v. Marcus*, 121 Ala. 187, 25 South. 852; *Birmingham Shoe Co. v. Torrey*, 121 Ala. 89, 25 South. 763; *Williams v. Dismukes*, 106 Ala. 402, 17 South. 620; *Ernest v. Merritt*, 107 Ga. 61, 32 S. E. 898; *Wisconsin Granite Co. v. Gerrity*, 144 Ill. 77, 33 N. E. 31; *Andrews v. Donnerstag*, 70 Ill. App. 236; *Henderson v. Thornton*, 37 Miss. 448, 75 Am. Dec. 70; *Glover v. Hargadine-McKittrick Dry-Goods Co.*, 62 Neb. 483, 87 N. W. 170; *Orr v. Peters*, 197 Pa. 606, 47 Atl. 849; *Garland v. Rives*, 4 Rand. 282, 15 Am. Dec. 756; *Anderson v. Provident Life & Tr. Co.*, 25 Wash. 20, 64 Pac. 933; *Gullickson v. Madsen*, 87 Wis. 19, 57 N. W. 965. Where the relief sought is to have the debtor's deed absolute on its face declared a mortgage, the sale of property so clouded under execution is obviously not an adequate remedy: *Wollenberg v. Minard*, 37 Or. 621, 62 Pac. 532. In some jurisdictions it is held that the bill will not lie after a lien by attachment has accrued: *Taylor v. Lander*, 61 Kan. 588, 60 Pac. 320; *Bailey v. American Nat. Bank*, 12 Colo. App. 66, 54 Pac. 912. And see *Ideal Clothing Co. v. Hazle*, 126 Mich. 262, 8 Detroit Leg. N. 20, 85 N. W. 735; *Suplee v. Callaghan*, 200 Pa. St. 146, 49 Atl. 950; *People's Nat. Bank v. Kern*, 193 Pa. St. 59, 44 Atl. 331, 44 Wkly. Not. Cas. 457. Of course if no cloud is created by the conveyance, as where the conveyance is made after plaintiff's judgment lien has attached, the legal remedy is adequate, and equity will not interfere: *Bridges v. Cooper*, 98 Tenn. 394, 39 S. W. 723.

¹⁷ *Mann v. Appel*, 31 Fed. 381; *Sabin v. Anderson*, 31 Or. 487, 49 Pac. 870.. But see *Childs v. N. B. Carlstein Co.*, 76 Fed. 86.

¹⁸ *Brumbaugh v. Richcreek*, 127 Ind. 240, 22 Am. St. Rep. 649, 26 N. E. 664 (averment necessary that at the time when the suit was brought the debtor had no property out of which the debt

upon which his judgment is a lien, it is only inviting useless litigation for him to question conveyances made by the debtor, which, however they may have been intended, do not operate as a fraud upon him."¹⁹ And where the judgment debtor turns over to his creditor property ample, if converted into money, to pay the debt, a court of equity clearly will not entertain a bill to reach other property.²⁰

The statute, existing in several states, which authorizes a simple contract creditor to subject property fraudulently conveyed, or attempted to be fraudulently conveyed, by the debtor, changes the rule, and authorizes the creditor to proceed without regard to the existence of other legal assets.²¹

The fact that a surety is solvent will not cause equity to refuse relief against a fraudulent conveyance by the principal debtor.²²

Where judgment has been obtained against two or more debtors jointly, one of whom has made a fraudulent conveyance, the better opinion appears to be that the complainant, seeking to remove the fraudulent obstruction, is not required to show that the other judgment debtors have no property upon which a levy can

might be collected); *Dunham v. Cox*, 10 N. J. Eq. (2 Stockt.) 437, 64 Am. Dec. 460; *Bradley v. Larkin*, 5 Kan. App. 11, 47 Pac. 315. But see *contra*, *Patton v. Bragg*, 113 Mo. 595, 35 Am. St. Rep. 730, 20 S. W. 1059; *Hoffman v. Fleming*, 43 W. Va. 762, 28 S. E. 790. In this latter case the court, referring to parties to the fraud, said: "They have no rights which equity is bound to respect." With the cases cited in the notes to this section, cf. § 887, *post*.

¹⁹ *Dunham v. Cox*, 10 N. J. Eq. (2 Stockt.) 437, 64 Am. Dec. 460, by Williamson, Ch.

²⁰ *Preston v. Colby*, 117 Ill. 447, 4 N. E. 375.

²¹ *McClarín v. Anderson*, 109 Ala. 571, 19 South. 982; *Henderson v. Farley Nat. Bank*, 123 Ala. 547, 82 Am. St. Rep. 140, 26 South. 226; *O'Neil v. Birmingham Brewing Co.*, 101 Ala. 383, 13 South. 576.

²² *State v. Parsons*, 147 Ind. 579, 62 Am. St. Rep. 430, 47 N. E. 17.

be made,²³ or that the legal remedies against them have been exhausted.²⁴ And though a judgment debtor has property in another state subject to execution, his creditors are not required to go out of the state of their residence in search of that property, before proceeding in the state of his and their residence to subject to their judgments property transferred in fraud of his creditors.²⁵

§ 875. **Discovery of Assets.**—The complainant may demand and obtain a complete discovery of the defendant's assets and a disclosure of the names of his debtors.²⁶

²³ *Vasser v. Henderson*, 40 Miss. 519, 90 Am. Dec. 351; *Crocker v. Huntzicker*, 113 Wis. 181, 88 N. W. 232; *contra*, *Eller v. Lacy*, 137 Ind. 436, 36 N. E. 1088; *Riddick v. Parr*, 111 Iowa, 733, 82 N. W. 1002.

²⁴ *Multnomah St. R. Co. v. Harris*, 13 Or. 198, 9 Pac. 402.

²⁵ *O'Brien v. Stanbach*, 101 Iowa, 40, 63 Am. St. Rep. 368, 69 N. W. 1133.

²⁶ *Thomas v. Adams*, 30 Ill. 37 (against the heirs and administrators of a deceased judgment debtor); *Gordon v. Lowell*, 21 Me. 251; *Mitchell v. Bunch*, 2 Paige, 606, 22 Am. Dec. 669; *Cadwallader v. Granville etc. Society*, 11 Ohio, 292; *Clarke v. Webb*, 2 Hen. & M. (Va.) 8 (against executor of deceased judgment debtor). "I have no doubt that this court can and ought to lend its aid, whenever that aid becomes requisite, to enforce a judgment at law by compelling a discovery and account, either as against the debtor or as against any third person who may have possessed himself of the debtor's property and placed it beyond the reach of an execution at law": Kent, Ch., in *Hendricks v. Robinson*, 2 Johns. Ch. 283, 296. "We regard it proper practice, when the liability of the defendant is fixed, and no assets at law are forthcoming, to compel him to disclose his means to pay the debt, especially where the nature of the resources are [sic] pointed out by the bill, and his answers, upon such a point, specifically required: 4 Johns. Ch. 620. If it were otherwise, equitable assets would frequently escape the most searching inquiries of creditors." The bill was against a corporation and asserted that a great number of individuals, whose names were unknown, but who, when discovered, the plaintiffs asked might be made parties, were indebted for subscription of stock, and prayed that the company might set forth their names in their

Even if no relief can be afforded by the court in which suit is brought, the complainant is entitled to discovery for the purpose of enabling him to reach the defendant's

answer; held, that this general description did not make a "fishing bill" which required no answer: *Miers v. Zanesville & M. Turnpike Co.*, 11 Ohio, 273. In *Bay State Iron Co. v. Goodall*, 39 N. H. 223, 75 Am. Dec. 219, there is a good statement as to the scope of the bill. The court says: "In this proceeding, the complainant is entitled to a discovery of all the real estate on which he had acquired a lien by his proceedings at law, and of the nature and character of the encumbrances upon it, and of the conveyances of it; that, if fraudulent, they may be removed by a decree, and the plaintiff may be enabled to reach it by an execution at law. He is also entitled to a discovery of all the property, both real and personal, now owned by the defendant, wherever it may be situated; that if within the state, it may be reached by an execution, and if elsewhere, or if such that it cannot be taken on execution, as trust funds, choses in action, stocks, etc., the defendant may be compelled, by an order of the court, to transfer the property by a proper conveyance to a receiver, to be sold and applied to the payment of the complainant's debt. He has a right to a full discovery from the defendant of every trust created for his benefit, that the court may see whether it is one on which his creditors have any equitable claim for the satisfaction of their debts."

A bill praying discovery need not set out the property sought: *Dutton v. Thomas*, 97 Mich. 93, 56 N. W. 229.

In Alabama it is provided by statute that a creditor who has no lien or judgment may file a bill in chancery for discovery of assets of the debtor, liable to the payment of his debts: Code, Ala. 1886, § 3545. Under this, it has been held that a creditor's bill for discovery must show—"First, that defendant is without visible means, subject to legal process, of value sufficient to pay the demand sued for; second, that he has means or assets not accessible under legal process liable to the satisfaction of the debt, for the discovery of which the bill is presented": *Lawson v. Warren*, 89 Ala. 584, 8 South. 141. It is not necessary that the creditor know or allege the nature of the assets he seeks to discover: *Moore v. Alabama Nat. Bank*, 120 Ala. 89, 23 South. 831; *Drennen v. Alabama Nat. Bank*, 117 Ala. 320, 23 South. 71. Under the statute, a creditor without a lien may file a bill to discover any property which has been fraudulently transferred or conveyed by the debtor: *Guyton v. Terrell*, 132 Ala. 66, 31 South. 83; and in such a case it is un-

property through the medium of the proper legal tribunal.²⁷

§ 876. What Property may be Reached—Intangible Property.—The principle that a creditor's bill may reach any property of the judgment debtor which, by reason of its nature only, and not by reason of any positive rule exempting it from liability for debt, cannot be taken on execution at law, extends to such intangible property as a patent or copyright. Such property is capable of assignment, and may be reached in a creditor's bill by an order directing its assignment to a receiver appointed for the purpose of applying it to the payment of the judgment.²⁸

§ 877. Choses in Action.—It is probably the majority rule that, in the absence of statutory authorization, a creditor's bill cannot reach the *choses in action* of the judgment debtor, unless the case presents some independent ground of equity jurisdiction, such as fraud, trust, or the like.²⁹ It is claimed that the purpose of

necessary to allege insolvency: *Rice v. Eiseman*, 122 Ala. 343, 25 South. 214.

In Texas it has been held that the effect of the statutory system has been to abolish bills of discovery: *Cronin v. Gay*, 20 Tex. 460. Consequently, it has been held that a bill of discovery will not lie to compel a judgment debtor to disclose assets on which execution may be levied: *Kountze v. Cargill*, 86 Tex. 386, 25 S. W. 13.

²⁷ *Le Roy v. Rogers*, 3 Paige, 234, by Walworth, Ch.

²⁸ *Stephens v. Cady*, 14 How. 528, 14 L. ed. 528 (*dictum*); *Ager v. Murray*, 105 U. S. 126, 26 L. ed. 942, reviewing cases; *Pacific Bank v. Robinson*, 57 Cal. 520, 40 Am. Rep. 120; *Vail v. Hammond*, 60 Conn. 374, 25 Am. St. Rep. 330, 22 Atl. 954; *Beidler v. Crane*, 135 Ill. 92, 25 Am. St. Rep. 349, 25 N. E. 655 (fraudulent conveyance of patent right); *Wilson v. Martin-Wilson etc. Fire Alarm Co.*, 149 Mass. 24, 20 N. E. 318, 151 Mass. 515, 24 N. E. 784, 8 L. R. A. 309; *Sprogg v. Dichman*, 59 N. Y. Supp. 966, 28 Misc. Rep. 409 (seat in stock exchange); *Gillett v. Bate*, 86 N. Y. 87.

²⁹ An important case maintaining this view is *Greene v. Keene*, 14 R. I. 388, 51 Am. Rep. 400, from which we quote at some length.

creditors' bills is not to give a new species of execution which the law does not afford, but that they merely present instances of the exercise of jurisdiction based on other well-recognized grounds. The conceded failure of justice consequent upon the denial of the jurisdiction results from no defect in the ancient common

"The cases in which [the question] has been most frequently considered have been those in which an insolvent debtor has made a voluntary settlement, or conveyance, or other disposition of this species of property, alleged to be in fraud of the rights of creditors. . . . The early cases in England, in which the courts exercised the jurisdiction in favor of the creditor, were of this character. *Smither v. Lewis*, 1 Vern. 398; *Taylor v. Jones*, 2 Atk. 600; *King v. Dupine*, 2 Atk. 603, note; *King v. Marissal*, 3 Atk. 192; *Edgell v. Haywood*, 3 Atk. 352; *Horn v. Horn*, Amb. 79; *Partridge v. Gopp*, Amb. 596, 598, also 1 Eden, 163, 168. Subsequently, however, even in this class of cases the jurisdiction was denied. *Dundas v. Dutens*, 1 Ves. Jr. 196, 198; 2 Cox, 240; *Caillard v. Estwick*, 1 Anstr. 381, 385; *Nantes v. Corrock*, 9 Ves. Jr. 188, 189; *Rider v. Kidder*, 10 Ves. Jr. 360, 368; *Bank of England v. Lunn*, 15 Ves. Jr. 569, 577; *McCarthy v. Gould*, 1 B. & Beatty, 387, 389, 390; *Crogan v. Cooke*, 2 B. & Beatty, 230, 233; *Grey v. Pearkes*, 18 Ves. Jr. 197; *Otley v. Lines*, 7 Price, 274, 276, 277; *Cockrane v. Chambers*, cited in note to *Horn v. Horn*, Amb. 79; *Mathews v. Feaver*, 1 Cox, 278, 280. The reasons which led the courts to deny the jurisdiction were, that the statute of Elizabeth was not intended to enlarge the remedies of creditors, nor to subject to execution any property not already liable thereto; that the kinds of property in question were not liable to execution at law, and equity had no power to grant execution in aid of the infirmity of the law; hence it would be an idle proceeding to set aside a conveyance which when set aside would leave the property in the name and control of the debtor, where it could not be touched." The opinion in the principal case then proceeds to examine *Payard v. Hoffman*, 4 Johns. Ch. 450 (*Chancellor Kent*), and *Spader v. Davis*, 5 Johns. Ch. 280, S. C., *sub nom.* *Hadden v. Spader*, 20 Johns. 554, 562, which are frequently relied on in support of the jurisdiction to reach *choses in action*; and reaches its conclusion denying the jurisdiction in reliance on the opinion in *Donovan v. Finn*, 1 Hopk. Ch. 59, 74, 14 Am. Dec. 531. The following cases are also cited as denying the jurisdiction: *McFerran v. Jones*, 2 Litt. 220, 222, 223; *Buford v. Buford*, 1 Bibb, 305-308; *Doyle v. Sleeper*, 1 Dana, 531, 534, 535, 558, 562; *Watkins v. Dorsett*, 1 Bland, 530, 533, 534, 535; *Shaw v. Aveline*, 5 Ind. 380, 384, 385; *Stewart v. English*, 6 Ind. 176, 182; *People v. Stanley*, 6

law which it is the business of equity to supply, but from the act of the legislature in abolishing the common-law remedy of execution against the person. It is to be observed that this reasoning implicitly denies the jurisdiction of equity to reach intangible property as well as choses in action. Numerous cases, however, support the jurisdiction of equity to reach the debtor's choses in action, when the execution cannot be otherwise satisfied, independently of fraud or other ground

Ind. 410, 412; *Williams v. Reynolds*, 7 Ind. 622, 625; *Keightly v. Walls*, 27 Ind. 384, 386. *Donovan v. Finn*, *supra*, takes the ground that the cases of authority in which relief has been given to judgment creditors were in themselves cases of equitable jurisdiction, involving fraud, or trust, or seeking to subject to the satisfaction of a judgment, property in itself liable to execution, by removing a conveyance which operated as a fraudulent impediment to the execution. "In such cases the court has jurisdiction, not to give a species of execution which the courts of law do not afford, but to give relief in the particular cases allotted to its jurisdiction. . . . To subject these [choses in action] to the satisfaction of a judgment, by seizing and selling them like goods in possession, would be to alter the established law of the land, and the courts have no power to make such alteration in the name of equity." It is pointed out that the resulting failure of justice is not the fault of the ancient common law, but of the legislature, in abolishing imprisonment for debt. It will be observed that this reasoning denies the jurisdiction to reach intangible property not subject to execution, as well as things in action. In the recent case of *Harper v. Clayton*, 84 Md. 346, 57 Am. St. Rep. 407, 35 Atl. 1083, 35 L. R. A. 211, 44 Cent. L. J. 97, the authorities were again examined, and the reasoning of *Donovan v. Finn* adopted. The court remarks: "Nor do we assent to this view that the mere abolition of the extraordinary remedies of outlawry and attachment of the person would confer jurisdiction on equity. Such a conclusion would be in conflict with reason, as well as with modern authority. It would certainly not seem to follow that if the law had always and consistently refused to give an execution against things in action, and had allowed only the extraordinary remedies just mentioned, that upon the destruction of the latter, the former would not only thereupon spring into existence, but become remedies appropriate for a court of equity. The contrary conclusion would, we think, be more reasonable, namely, that the legislature having abolished execution against

of jurisdiction, basing the jurisdiction on the general power of equity to furnish a remedy when the strict rules of legal practice fail.³⁰ The defect in the jurisdiction of equity, if it exists, has been very generally met by statutes giving the judgment creditor who has exhausted his remedy by execution the right to proceed against the choses in action of his debtor, in order to obtain satisfaction of the judgment.³¹

It seems that a chose in action that may be reached in equity must be one that is in its nature assignable. Thus, a verdict in the debtor's favor for damages in an action for a tort to the person, on which judgment has not been entered, cannot be reached by the creditor.³² On the other hand, a cause of action for the conversion of,³³ or injury to,³⁴ the debtor's property may be subjected to the creditor's claim.

the person which was used for the purpose of getting satisfaction out of the debtor's effects which could not be reached by other executions, and having failed to provide any new remedy to take its place, it was not intended there should be any. . . . 'No court of chancery at this day would attempt to supply the defects of law by deciding contrary to its settled rules in any manner, to any extent, or under any circumstances, beyond the already settled principles of equity jurisprudence: 1 Pom. Eq. Jur., § 47.' "

³⁰ Hadden v. Spader, 20 Johns. (N. Y.) 554, by Woodworth, J., and Spencer, C. J.; Edmeston v. Lyde, 1 Paige, 637, 19 Am. Dec. 454, by Walworth, Chan.; Tarbell v. Griggs, 3 Paige, 207, 33 Am. Dec. 790, by Walworth, Chan.; Tompkins v. Fonda, 4 Paige, 448 (unassigned dower); Bigelow v. Congregational Society, 11 Vt. 283; Pendleton v. Perkins, 49 Mo. 565, by Bliss, J.

³¹ See Tompkins v. Fonda, 4 Paige (N. Y.), 448; Tantum v. Green, 21 N. J. Eq. 364.

³² Bennett v. Sweet, 171 Mass. 600, 51 N. E. 183. See, also, City of Cincinnati v. Hafer, 49 Ohio St. 60, 30 N. E. 197.

³³ German Nat. Bk. v. First Nat. Bk., 55 Neb. 86, 75 N. W. 531.

³⁴ Hudson v. Plets, 11 Paige, 180. In City of Cincinnati v. Hafer, 49 Ohio St. 60, 30 N. E. 197, the court said: "Mere personal torts die with the party and are not assignable; but where the action is brought for damage to the estate, and not for injury to the person, personal feelings or character, and the right of action survives to

It is held that *alimony* awarded to a wife cannot be applied by creditor's bill to the payment of a debt contracted before the decree of divorce. "Alimony is not strictly a debt due to the wife, but rather a general duty of support, made specific and measured by the court. . . . It is property in one sense, but not in the broad general sense of the term. It is a specific fund provided for a specific purpose, with restraint and limitation written all over its face by the very law and decree which brought it into existence."³⁵

§ 878. **Contingent Interests.**—A contingent interest may be subjected to the payment of debts by a creditor's bill.³⁶ Where a will provides, however, that an heir is

the personal representative, it may be assigned so as to pass an interest to the assignee." And in this case the creditor was allowed to reach the interest. In *Hudson v. Plets*, 11 Paige, 183, the court said: "The right to an action for an injury to the property of the judgment debtor before the filing of the complainant's bill, whereby the property to which the creditor was entitled to resort for the payment of his debt is destroyed or diminished in value, appears to be such a thing in action as may properly be reached and applied to the payment of the complainant's debt under a creditor's bill." In *Meriwether v. Bell*, 22 Ky. Law Rep. 844, 58 S. W. 987, the court said: "What other claim for unliquidated damages may be reached and subjected under the statute above quoted, we need not determine in this case; but we are satisfied that it must at least include all claims on which an action of *indebitatus assumpsit* lay at common law, if the plain purpose of its enactment is not to be defeated." In a recent case an administrator recovered judgment against a railroad company for the death of the deceased. It was provided by statute that in such a case the money should go to certain heirs, and not be subject to the debts of the deceased. The administrator was an heir. It was held that he had an interest in the judgment which could be reached by his creditor: *Cassady v. Grimmelman*, 108 Iowa, 695, 77 N. W. 1067.

³⁵ *Romaine v. Chauncey*, 129 N. Y. 566, 26 Am. St. Rep. 544, 29 N. E. 826, 14 L. R. A. 712.

³⁶ *Jacob v. Howard*, 15 Ky. Law Rep. 133, 22 S. W. 332; *Bryant v. Bryant*, 14 Ky. Law Rep. 358, 20 S. W. 270. But see *Overturf v. Gerlach*, 62 Ohio St. 127, 78 Am. St. Rep. 704, 56 N. E. 653, where

to take nothing until his sister becomes of age, a sale of his interest will not be decreed if it will cause an inequitable sacrifice of his property.³⁷

§ 879. **Equitable Interests.**—In general, any equitable interest of an execution debtor may be reached by a creditor's bill and subjected to the payment of the debt.³⁸ As examples of the equitable interests and estates which can be reached may be mentioned: Property held for the debtor on an express trust;³⁹ a trust resulting to the debtor from payment by him of the purchase price of property and procuring the title to be taken in the name of another;⁴⁰ improvements placed

the court said: "Generally, subject to some exemptions, any sum of money due a debtor may be reached in a proper proceeding by his creditor, where he refuses to apply it to the claim of the creditor. But the money must be due or to become due, subject to no other condition than the lapse of time, for the proceeding presupposes the power to order, without qualification, the payment of money due the debtor from another to the debtor's creditor."

37 *Mears v. Lamona*, 17 Wash. 148, 49 Pac. 251.

38 *Gerety v. Donahue*, 8 Kan. App. 175, 55 Pac. 476; *Galveston etc. Ry. v. McDonald*, 53 Tex. 510.

39 *Edmeston v. Lyde*, 1 Paige, 637, 19 Am. Dec. 454; *Young's Trustee v. Bullen*, 19 Ky. Law Rep. 1561, 43 S. W. 687; *Hancock v. Twyman*, 19 Ky. Law Rep. 2006, 45 S. W. 68; *De Hierapolis v. Lawrence*, 99 Fed. 321; *Spencer v. Richmond*, 61 N. Y. Supp. 397, 46 App. Div. 481; *Raymond v. Leinberger*, 50 Neb. 815, 70 N. W. 400. "If the judgment debtor owns real estate the legal title to which is in another, but without any beneficiary interest, and the judgment debtor owns all the beneficiary interest in the land, a court of equity may in proper proceedings, direct the defendant's interest in the land to be sold, whether or not the title was placed in the third person with fraudulent intent. If the result is to prevent the creditor from enforcing his claim against the land, the impediment may be removed by a court of equity and the land sold to satisfy the judgment": *Cochran v. Cochran*, 62 Neb. 450, 87 N. W. 152.

40 *McGregor-Noe Hardware Co. v. Horn*, 146 Mo. 129, 47 S. W. 957; *Goodrich v. Hicks*, 19 Tex. Civ. App. 528, 48 S. W. 798; *Millard v. Parsell*, 57 Neb. 178, 77 N. W. 390; *Williams v. Michenor*, 11

by a debtor husband on his wife's land;⁴¹ an equitable interest in land for purchase-money unpaid;⁴² an equitable interest by virtue of an executory contract for its purchase;⁴³ an equity of redemption.⁴⁴

To the rule that all equitable estates and interests of the debtor may be subjected in equity to the creditor's claims an important exception exists in those jurisdictions which recognize the validity of so-called "spendthrift trusts." In those states "it is competent for testators and grantors, by will or deed, to construct and establish trusts, both of real and personal property, and of the rents, issues, profits, and produce of the same, by appropriate limitations and powers to trustees, which shall secure the application of such bounty to the personal and family uses during the life of the beneficiary, so that it shall not be subject to alienation, either by voluntary act on his part, or *in invitum*, by his creditors."⁴⁵ The grantor, however, cannot, by creating a trust for his own benefit, place the proceeds of the trust beyond the reach of his creditors.⁴⁶ By the statutory policy of many states, following the lead of the New York Revised Statutes, the income of all trusts created

N. J. Eq. 520; *Kilham v. Western Bank & S. D. Co.*, 30 Colo. 365, 70 Pac. 409; *Godbold v. Lambert*, 8 Rich. Eq. (S. C.), 155, 70 Am. Dec. 192.

⁴¹ *Kirby v. Bruns*, 45 Mo. 234, 100 Am. Dec. 376.

⁴² *Withers v. Carter*, 4 Gratt. 407, 50 Am. Dec. 78.

⁴³ *Bank of Opelika v. Kizer*, 119 Ala. 194, 24 South. 11.

⁴⁴ *Hegler v. Grove*, 63 Ohio St. 404, 59 N. E. 162 (statute); *Wise v. Taylor*, 44 W. Va. 492, 29 S. E. 1003. A creditor's bill will lie to foreclose a mortgage given by the debtor to a third person, in order to reach the surplus, if any: *Bridges v. Cooper*, 98 Tenn. 401, 39 S. W. 720.

⁴⁵ *Spindle v. Shreve*, 111 U. S. 542, 4 Sup. Ct. 522, 28 L. ed. 512; *Wood v. McClelland* (Tex. Civ. App.), 53 S. W. 381.

For an extensive collection of recent cases upholding such trusts, see 3 Pom. Eq. Jur. (3d ed.), § 989, notes 5 and (f).

⁴⁶ *McIlvaine v. Smith*, 42 Mo. 45, 97 Am. Dec. 295.

for certain designated objects, such as the support and education of the *cestui que trust*, is put beyond the reach of the *cestui's* creditors, except so far as it exceeds the amount necessary for accomplishing such objects. A creditor's bill lies to reach the surplus income only.⁴⁷ By the statutes of other states, all trusts created by or proceeding from a person other than the debtor himself are exempt from the operations of a creditor's bill.⁴⁸

§ 880. **Fraudulent Transfers of Personalty may be Set Aside.**—A creditor's bill to remove a fraudulent obstruction to execution may be directed against a fraudulent transfer of personal property as well as a fraudulent conveyance of real property. It is not often used for this purpose, however, the general practice being to levy on personal property and determine the ownership by action of replevin.⁴⁹

⁴⁷ *Rider v. Mason*, 4 Sandf. Ch. 351; *Bramhall v. Ferris*, 14 N. Y. 41, 67 Am. Dec. 113; *Schuler v. Post*, 18 App. Div. 374, 46 N. Y. Supp. 18; *Howard v. Leonard*, 3 App. Div. 277, 38 N. Y. Supp. 363; *First Nat. Bk. v. Mortimer*, 28 Misc. Rep. 686, 60 N. Y. Supp. 47. See 3 Pom. Eq. Jur., §§ 1003-1005.

⁴⁸ See *Frazier v. Barnum*, 19 N. J. Eq. (4 C. E. Green) 316, 97 Am. Dec. 666; *Spindle v. Shreve*, 111 U. S. 542, 4 Sup. Ct. 522, 28 L. ed. 512 (Illinois). By Massachusetts Stat. 1888, c. 429, § 15, money due from a beneficial association to a certificate holder therein is exempt from equitable as well as legal process: *Geer v. Horton*, 159 Mass. 259, 34 N. E. 269. In Illinois, the income of trust property cannot be reached by creditors of the *cestui* while it remains in the hands of the trustee: *Binns v. La Forge*, 191 Ill. 598, 61 N. E. 382.

⁴⁹ *O'Brien v. Stambach*, 101 Iowa, 40, 69 N. W. 1133, 63 Am. St. Rep. 368; *Webb v. Staves*, 37 N. Y. Supp. 414, 1 App. Div. 145 (chattel mortgage void for want of proper filing); *Pierstoff v. Jorges*, 86 Wis. 128, 39 Am. St. Rep. 881, 56 N. W. 735; *Ladd v. Smith*, 107 Ala. 506, 18 South. 195 (fraudulent transfer of stock); *Rapp v. Whittier*, 113 Cal. 429, 45 Pac. 703; *Highley v. Am. Exch. Nat. Bank*, 185 Ill. 565, 57 N. E. 436 (transfer of stock); *Sweetser v. Silber*, 87 Wis. 102, 58 N. W. 239 (fraudulent chattel mortgage);

§ 881. Property Which cannot be Reached by the Suit.— Motives of public policy clearly prohibit a suit to reach the salary of a state official.⁵⁰ In a majority of cases it is held that garnishment does not lie against a municipal corporation. "A municipal corporation cannot be turned into an instrument or agency for the collection of private debts." It has been held that for the same reason a creditor's bill cannot be maintained against a municipal corporation to reach money due its employees or contractors.⁵¹ Other cases establish the more reasonable rule that if the court can ascertain that no inconvenience can result to the public in a given case, the suit may be maintained.⁵² The defend-

Gullickson v. Madsen, 87 Wis. 19, 57 N. W. 965 (chattel mortgage); F. Meyer Boot & Shoe Co. v. C. Shenberg Co., 11 S. Dak. 620, 89 N. W. 126 (*dictum*); Hirsch v. Israel, 106 Iowa, 498, 76 N. W. 811 (chattel mortgage); McNew v. Smith, 5 Gratt. 84.

50 Bank of Tennessee v. Dibrell, 3 Sneed (Tenn.), 379.

51 Addyston Pipe & Steel Co. v. City of Chicago, 170 Ill. 580, 48 N. E. 967, 44 L. R. A. 405. Public policy forbids that a county should in any manner be interfered with in settling for necessary public work, even after the same has been completed: Morgan v. Rust, 100 Ga. 346, 28 S. E. 419.

52 Riffin v. Hilliard, 56 Ark. 476, 35 Am. St. Rep. 113, 20 S. W. 402; Knight v. Nash, 22 Minn. 452; Pendleton v. Perkins, 49 Mo. 565; Speed v. Brown, 10 B. Mon. (Ky.) 108. In Pendleton v. Perkins the court says, by Bliss, J.: "Upon what principle should this fact [the statutory prohibition against garnishing a city] also deprive them of the equitable remedy they would possess if the garnishment process were unknown to the law? So far from that, it is the foundation of their right to relief. The maxim that equity follows the law has no such application; otherwise, in most cases where legal remedies fail, equitable relief would be cut off. The court, in analogy to the former relief in chancery, would disregard the letter of the statute forbidding garnishment, but would conform to its spirit and refuse to interfere when the reason for the prohibition existed." But see Geist v. City of St. Louis, 156 Mo. 643, 79 Am. St. Rep. 545, 57 S. W. 766. Where a creditor's bill seeks to reach an amount alleged to be due from a city to its school board, which can only be correctly ascertained by an accounting, there is not an adequate remedy at law, and equity has jurisdiction: City of New Orleans v. Fisher, 91 Fed. 574, 34 C. C. A. 15.

ant in such a suit may be compelled to assign his demand against the municipality to a receiver to be collected and applied to the satisfaction of the plaintiff's demand.⁵³

Property devoted to a public use by a private individual or corporation is frequently exempt from execution, and likewise from a creditor's bill. Thus, it is held that land dedicated for a public cemetery cannot be reached, although the owner of the legal title to a portion of the lots receives a portion of the revenues derived from the sale thereof for burial purposes.⁵⁴ On the other hand, where taxpayers had obtained a decree declaring a contract void, it was held that they were entitled to a decree in aid of execution subjecting the property of an electric light plant.⁵⁵

There are various statutory exemptions, such as homesteads, which will prevent a creditor from reaching property even by a creditor's bill. A homestead exemption, however, cannot avail against a creditor's bill unless it exists when the bill is filed.⁵⁶ Under the federal statutes, Indians are entitled to many exemptions; but a lease of lands in the Indian country may be reached by creditor's bill.⁵⁷

Money *in custodia legis*, in the hands of a clerk of court in his official capacity, cannot be made the subject of a creditor's bill.⁵⁸

⁵³ *Riggin v. Hilliard*, 56 Ark. 476, 35 Am. St. Rep. 113, 20 S. W. 402; *Knight v. Nash*, 22 Minn. 452.

⁵⁴ *First Nat. Bank v. Hazel*, 63 Neb. 844, 89 N. W. 378, 56 L. R. A. 765.

⁵⁵ *Campbell v. Western Electric Co.*, 113 Mich. 333, 71 N. W. 644.

⁵⁶ *Hines v. Duncan*, 79 Ala. 112, 58 Am. Rep. 580. See, also, *Jayne v. Hymer*, 66 Neb. 785, 92 N. W. 1019.

⁵⁷ *Daugherty v. Bogy*, 3 Ind. Ter. 197, 53 S. W. 542.

⁵⁸ *Anheuser-Busch Brew. Assn. v. Hier*, 52 Neb. 424, 72 N. W. 588; and see *United States v. Eisenbeis*, 88 Fed. 4, where the money was in court awaiting distribution in condemnation suits brought by the United States.

§ 882. **Necessity for Judgment at Law—Statutes Changing the Rule.**—In the absence of statute, a simple contract creditor cannot, in general, maintain a creditor's bill.⁵⁹ Before resorting to equity, he must reduce his claim to judgment at law. In regard to bills to set aside fraudulent conveyances, it is frequently said that the com-

⁵⁹ *Smith v. Ft. Scott, H. & W. R. R. Co.*, 99 U. S. 398, 25 L. ed. 437 (judgment necessary); *Public Works v. Columbia College*, 17 Wall. 521, 21 L. ed. 687; *George v. St. Louis Cable & W. R. Co.*, 44 Fed. 117 (validity and amount of a purely legal demand must be established at law); *Morrow etc. Mfg. Co. v. New England Shoe Co.*, 57 Fed. 685, 18 U. S. App. 256, 6 C. C. A. 508, 24 L. R. A. 425; *Streight v. Junk*, 59 Fed. 321, 8 C. C. A. 137, 16 U. S. App. 608; *Hook v. Ayres*, 64 Fed. 660, 12 C. C. A. 564, 24 U. S. App. 487; *Putney v. Whitmire*, 66 Fed. 385; *Foley v. Guarantee etc. Co.*, 74 Fed. 764, 21 C. C. A. 78; *Goff v. Kelly*, 74 Fed. 327; *Continental Trust Co. v. Toledo etc. R. Co.*, 82 Fed. 642; *Viquesney v. Allen*, 65 C. C. A. 259, 131 Fed. 21; *Aigeltinger v. Einstein*, 143 Cal. 609, 101 Am. St. Rep. 131, 77 Pac. 669 (judgment is essential; quoting *Pom. Eq. Jur.*, § 1415); *Faivre v. Gillman*, 84 Iowa, 573, 51 N. W. 46; *Mehlhop v. Ellsworth*, 95 Iowa, 657, 64 N. W. 638; *Peterson v. Gittings*, 107 Iowa, 306, 77 N. W. 1056 (must have a lien, or be in a position to perfect a lien); *Smith v. Sioux City Nursery & Seed Co.*, 109 Iowa, 51, 79 N. W. 457; *Allen v. Camp*, 17 Ky. (1 T. B. Mon.) 231, 15 Am. Dec. 109; *Davidson v. Dockery*, 179 Mo. 687, 78 S. W. 624 (must reduce his claim to judgment, obtain a lien, or, if a general creditor, show that he has no adequate remedy at law); *Missouri, K. & T. Trust Co. v. Richardson*, 57 Neb. 617, 78 N. W. 273 (creditor who has neither a judgment nor a lien is not entitled to relief); *Moore v. Omaha Life Assn.*, 62 Neb. 497, 87 N. W. 321; *Brumbaugh v. Jones (Neb.)*, 98 N. W. 54 (creditor whose claim has not been reduced to judgment, and who has neither a general nor specific lien upon the property cannot maintain the bill); *Kudrna v. Ainsworth*, 65 Neb. 711, 91 N. W. 711; *Fairbanks, Morse & Co. v. Welshans*, 55 Neb. 362, 75 N. W. 865; *Glorieux v. Schwartz*, 53 N. J. Eq. (8 Dick.) 231, 28 Atl. 470, 34 Atl. 1134; *Bird v. Magowan (N. J. Eq.)*, 43 Atl. 278; *Wolcott v. Ashenfelter*, 5 N. Mex. 443, 23 Pac. 780, 8 L. R. A. 691 (judgment necessary); *Cornell v. Savage*, 63 N. Y. Supp. 540, 49 App. Div. 429; *Dawson v. Sims*, 14 Or. 561, 13 Pac. 506 (judgment or lien necessary); *Kelly v. Herb*, 157 Pa. St. 41, 27 Atl. 559; *Matarese v. Caldaroni (R. I.)*, 58 Atl. 976 (citing *Pom. Eq. Jur.*, § 1415); *Miller v. Drake (Wis.)*, 99 N. W. 1017.

plainant must have either a judgment at law or some lien upon the property sought to be reached. Most of the cases laying down this rule are mere *dicta* upon the point; although we shall see that there is considerable real authority for the statement. The reasons given for requiring a judgment are two: (1) that equity should not interfere to aid a legal right before the legal remedy is tried;⁶⁰ (2) that a simple contract creditor "may never obtain a judgment, and, if he does not, he cannot be injured by any disposition of the property."⁶¹ In a few jurisdictions the equitable rule has been changed by statute, so that suits to set aside fraudulent conveyances may be maintained by simple contract creditors.⁶²

⁶⁰ Freeman on Executions, § 427. Compare *Ladd v. Judson*, 174 Ill. 344, 66 Am. St. Rep. 267, 51 N. E. 838 (debtor is entitled to a jury trial).

⁶¹ *Davidson v. Dockery*, 179 Mo. 687, 78 S. W. 624.

⁶² *Alabama*.—"The real purpose of the statute is to dispense with, and abrogate wholly, the pre-existing law, which required that there should be a judgment at law, or if a judgment, and the assets transferred fraudulently were not subject to execution, that there should be an exhaustion of legal remedies before the court would intervene to avoid fraudulent transfers and conveyances. That rule is blotted out, and any creditor may now . . . invoke the assistance of the court to avoid such transfers or conveyances": *Lehman v. Meyer*, 67 Ala. 403. See, also, *Evans v. Welch*, 63 Ala. 256; *Merchants' Nat. Bank v. McGee*, 108 Ala. 304, 19 South. 356; *McKissack v. Voorhees*, 119 Ala. 101, 24 South. 523; *Builders' & Painters' Supply Co. v. First Nat. Bank*, 123 Ala. 203, 26 South. 311. This does not affect creditors' bills for other purposes, however: *Marble City Land & F. Co. v. Golden*, 110 Ala. 376, 17 South. 935.

Arkansas.—*Riggin v. Hilliard*, 56 Ark. 476, 35 Am. St. Rep. 113, 20 S. W. 402 ("in suits to set aside fraudulent conveyances, and to obtain equitable garnishments, it shall not be necessary for the plaintiff to obtain judgment at law in order to prove insolvency, but in such case insolvency may be proved by any competent testimony, so that only one suit shall be necessary in order to obtain the proper relief").

Connecticut.—*Vail v. Hammond*, 60 Conn. 383, 25 Am. St. Rep. 330, 22 Atl. 954; *Huntington v. Jones*, 72 Conn. 45, 43 Atl. 564.

Equitable Remedies, Vol. II—90

The federal courts refuse to follow these statutes, however, upon the ground that the money demand is a mere legal claim, upon which the defendant is entitled to the benefits of a jury trial.⁶³

§ 883. **What Judgment is Sufficient.**—A judgment of a court of record, based upon a claim either in contract or in tort, is ordinarily sufficient. A fraudulent conveyance may be set aside, therefore, although when made the complainant had only an unliquidated claim for damages in tort.⁶⁴ In some states, judgments of in-

Indiana.—*Phelps v. Smith*, 116 Ind. 399, 19 N. E. 156.

Maryland.—*Balls v. Balls*, 69 Md. 388, 16 Atl. 18 (act of 1835, c. 380, § 2, dispensed with the necessity of a judgment in all cases of proceedings in equity "to vacate any conveyance or contract or other act as fraudulent against creditors").

Massachusetts.—*Sanford v. Wright*, 164 Mass. 85, 41 N. E. 120; *Bernard v. Barney M. Co.*, 147 Mass. 356, 17 N. E. 887.

North Carolina.—*Dawson Bank v. Harris*, 84 N. C. 206.

Tennessee.—*Greene v. Starnes*, 1 Heisk. 582 (quoting statute).

Virginia.—*Fink v. Patterson*, 21 Fed. 602; *Stovall v. Border Grange Bank*, 78 Va. 188.

West Virginia.—*Tuft v. Pickering*, 28 W. Va. 330; but the bill cannot be maintained before the complainant's claim is due: *Frye v. Miley*, 54 W. Va. 324, 46 S. E. 135.

⁶³ *Cates v. Allen*, 149 U. S. 457, 13 Sup. Ct. 884, 37 L. ed. 804; *Smith v. Railroad Co.*, 99 U. S. 401, 25 L. ed. 438; *United States v. Ingate*, 48 Fed. 251; *Atlanta etc. Co. v. Western Ry.*, 50 Fed. 790, 2 U. S. App. 227, 1 C. C. A. 676; *Putney v. Waymire*, 66 Fed. 385; *England v. Russell*, 71 Fed. 818; *Childs v. N. B. Carlstein Co.*, 76 Fed. 86; *Tompkins Co. v. Catawba Mills*, 82 Fed. 780; *First Nat. Bank v. Prager*, 91 Fed. 689, 63 U. S. App. 709, 34 C. C. A. 51; *Hall v. Gambril*, 92 Fed. 32, 63 U. S. App. 751, 34 C. C. A. 190; *Harrison v. Farmers' Loan & Tr. Co.*, 94 Fed. 728, 36 C. C. A. 443; *Peacock, Hunt & West Co. v. Williams*, 110 Fed. 917; *Hudson v. Wood*, 119 Fed. 764. For earlier cases *contra*, see *Buford v. Holley*, 28 Fed. 680; *Johnston v. Straus*, 4 Hughes, 636, 26 Fed. 57; *Flash v. Wilkerson*, 22 Fed. 689. For a fuller discussion, see 1 Pom. Eq. Jur., § 293, notes to third edition.

⁶⁴ *Chalmers v. Sheehy*, 132 Cal. 459, 84 Am. St. Rep. 62, 64 Pac. 709; *Schaible v. Ardner*, 98 Mich. 70, 56 N. W. 1105; *McInnis v.*

ferior tribunals, such as justices' courts, are not sufficient, unless steps are taken to make them a lien on real estate.⁶⁵ Ordinarily, a judgment of a court of a sister state will not sustain a bill; and the same principle applies to judgments of federal courts when used as a basis for creditors' bills in state courts.⁶⁶ Upon this latter question, however, there is a conflict of authority, some courts allowing the judgment of a federal court for a district comprised within the state, to serve as a foundation. The federal courts will sustain a creditor's bill upon a judgment of a state court.⁶⁷ A judg-

Wiscasset Mills, 78 Miss. 52, 28 South. 725; Thorp v. Leibrecht, 56 N. J. Eq. 499, 39 Atl. 361; Soly v. Aasen, 10 N. D. 108, 86 N. W. 108. To the effect that a judgment obtained against a non-resident upon publication of summons is sufficient, see Parmenter v. Lomax, 68 Kan. 61, 74 Pac. 634. To the effect that a deficiency judgment on mortgage foreclosure is not sufficient before amount determined, see Cotes v. Bennett, 84 Ill. App. 33. To the effect that a bill may be based upon a judgment for alimony, see Twell v. Twell, 6 Mont. 19, 9 Pac. 537.

⁶⁵ Peterson v. Gittings, 107 Iowa, 306, 77 N. W. 1056 (judgment of inferior court not sufficient); Mansfield v. Wilkinson, 16 Ky. Law Rep. 276, 27 S. W. 808 (not sufficient unless docketed); Crippen v. Hudson, 13 N. Y. 161 (judgment of justice of the peace must first be docketed). See, also, Ballentine v. Beall, 3 Seam. 203.

⁶⁶ Steere v. Hoagland, 39 Ill. 264 (neither the judgment of a sister state nor of a federal court is sufficient); Winslow v. Leland, 128 Ill. 304, 338, 21 N. E. 588 (judgment of federal court not sufficient); Guy B. Waite Co. v. Otto (N. J. Eq.), 54 Atl. 425 (foreign judgment not sufficient); Tarbell v. Griggs, 3 Paige, 207 (judgment of federal court not sufficient); but see Earle v. Grove, 92 Mich. 285, 52 N. W. 615; Zecharie v. Bowers, 9 Miss. (1 Smedes & M.) 584, 40 Am. Dec. 111. In the following cases, judgments of federal courts for districts within the state were held sufficient: Chicago & A. Bridge Co. v. Fowler, 55 Kan. 17, 39 Pac. 727 (by virtue of statute making such judgments liens on real estate); First Nat. Bank v. Sloman, 42 Neb. 350, 47 Am. St. Rep. 707, 60 N. W. 589. See, also, Ballin v. Loeb, 78 Wis. 404, 47 N. W. 516, 10 L. R. A. 742.

⁶⁷ Handley v. Stulz, 139 U. S. 417, 11 Sup. Ct. 530, 35 L. ed. 227; Bidwell v. Huff, 103 Fed. 362; Alkire Grocery Co. v. Richesin, 91 Fed. 79; Cleveland Rolling Mill Co. v. Joliet Enterprise Co., 53

ment which is reversed on appeal is, of course, not sufficient;⁶⁸ but the mere fact that an appeal is pending does not prevent the creditor from maintaining his suit in equity.⁶⁹ As to the effect of a judgment becoming dormant while the bill is pending, there is a conflict of authority.⁷⁰ In general, the judgment cannot be attacked in the equitable proceedings; but if it is void, it is not sufficient to sustain the bill, and relief will be denied.⁷¹

§ 884. **When Judgment may be Dispensed With.**—To the rule requiring a judgment as a prerequisite to a creditor's bill, a few exceptions are allowed in some jurisdictions. Thus, it is sometimes held that a creditor need not obtain judgment before resorting to equity to

Fed. 683; *Barnett v. East Tenn., V. & G. R. Co.* (Tenn. Ch. App.), 48 S. W. 817.

⁶⁸ *Kudrna v. Ainsworth*, 65 Neb. 711, 91 N. W. 711; *North Hudson Mut. B. & L. Assn. v. Childs*, 86 Wis. 292, 56 N. W. 870.

⁶⁹ *Barnett v. East Tenn. V. & G. R. Co.* (Tenn. Ch. App.), 48 S. W. 817.

⁷⁰ To the effect that relief may be granted, see *City of Cincinnati v. Hafer*, 49 Ohio St. 60, 30 N. E. 197. *Contra*, *Miller v. Melone*, 11 Okla. 241, 67 Pac. 479, 56 L. R. A. 620.

⁷¹ To the effect that the judgment cannot be collaterally attacked, see *Mattingly v. Nye*, 75 U. S. 370, 19 L. ed. 380; *Tilton v. Goodwin*, 183 Mass. 236, 66 N. E. 802; *Le Herisse v. Hess* (N. J. Eq.), 57 Atl. 808; *Bank of Wooster v. Stevens*, 1 Ohio St. 233, 59 Am. Dec. 619; *Millard v. Parsell*, 57 Neb. 178, 77 N. W. 390. See, also, *Schley v. Dixon*, 24 Ga. 273, 71 Am. Dec. 121. But see *Gregory v. Lamb*, 101 Ky. 727, 42 S. W. 339 (grantee in conveyance attacked as fraudulent may attack the judgment). To the effect that a void judgment will not support a creditor's bill, see *Epstein v. Ferst*, 35 Fla. 498, 17 South. 414; *Wilhelm v. Locklar* (Fla.), 35 South. 6. To the effect that the defendant may attack the judgment for fraud in obtaining it, see *Faris v. Durham*, 21 Ky. (5 T. B. Mon.) 397, 17 Am. Dec. 77. See, also, *Weaver v. Haviland*, 142 N. Y. 534, 40 Am. St. Rep. 631, 37 N. E. 641 (in the absence of fraud or collusion, defendant cannot question the judgment).

reach assets of a deceased debtor.⁷² A few states allow a resident general creditor to maintain a bill to reach property of a non-resident debtor within the state.⁷³ Likewise, exceptions have been made when the debtor has absconded and cannot be found within the state;⁷⁴ and when the debtor is insolvent and the claim is undisputed.⁷⁵ It has been held that a trustee in bankruptcy may maintain a bill to set aside a fraudulent

⁷² Mallow v. Walker, 115 Iowa, 238, 91 Am. St. Rep. 158, 88 N. W. 452; Kipper v. Glancy, 2 Blackf. 356. See, also, National Traders' Bank v. Wetmore, 124 N. Y. 248, 26 N. E. 548. See, on the subject of such bills, 3 Pom. Eq. Jur. § 1154, notes.

⁷³ First Nat. Bank v. Eastman, 144 Cal. 487, 103 Am. St. Rep. 95, 77 Pac. 1043; Patchen v. Rofkar, 52 App. Div. 367, 65 N. Y. Supp. 367; Quarl v. Abbott, 102 Ind. 234, 52 Am. Rep. 662, 1 N. E. 476. In Hess v. Horton, 2 App. D. C. 81, it was held that there is no exception where complainant is also a non-resident, if it does not appear that defendant has not sufficient property to satisfy plaintiff's claim in the jurisdiction of defendant's residence; but in Supplee Hardware Co. v. Driggs, 13 App. D. C. 272, where a resident defendant was insolvent and the only property of the non-resident was within the jurisdiction of the court, it was held that judgment was unnecessary. See cases cited in Pom. Eq. Jur., § 1415, note.

⁷⁴ Kipper v. Glancy, 2 Blackf. 356; Livingston v. Swofford Bros. Dry Goods Co., 12 Colo. App. 320, 56 Pac. 351; Merchants' Nat. Bank v. Paine, 13 R. I. 592. *Contra*: Detroit Copper & Brass Rolling Mills v. Ledwidge, 162 Ill. 305, 44 N. E. 751.

⁷⁵ Springfield Grocery Co. v. Thomas, 3 Ind. Ter. 330, 58 S. W. 557 (trust deed sought to be set aside expressly recognized plaintiff's claim); Tally v. Curtain, 54 Fed. 43, 8 U. S. App. 347; Burnham v. Smith, 82 Mo. App. 35; Austin v. Morris, 23 S. C. 393. In this last case the court said: "As we understand it, however, there is no law requiring such preliminary proceedings as an indispensable prerequisite to seeking equitable relief, but it has been adopted by the courts as the most satisfactory manner of proving that which is indispensable to such relief, viz., the fact that the party has no adequate remedy at law, that the debtor is insolvent, and, outside of the property in controversy, has not the means from which payment may be made. This is the very purpose of requiring judgment and a return of *nulla bona*. If that is shown by other proof, I never could see why judgments should be insisted on as an indispensable prerequisite." See, however, Austin v. Bruner, 65 Ill. App. 301.

conveyance without first obtaining judgment at law.⁷⁶ A general creditor, whose claim is recognized, has been allowed to attack a general assignment for the benefit of creditors;⁷⁷ and where there has been such an assignment, and the assignee refuses to sue to set aside a fraudulent conveyance, some courts allow a general creditor to bring the suit, upon the theory that he is a beneficiary seeking to enforce a trust.⁷⁸

§ 885. **Is an Attachment Lien Sufficient to Support a Creditor's Bill?**—It is established by perhaps the weight of authority that an attachment which creates a lien upon real property may be the foundation of a creditor's bill to set aside a fraudulent conveyance.⁷⁹ This lien is entitled to protection by courts of equity, so that there may be no fraudulent obstructions to the due execution of the process. Accordingly, it has been held that one who

⁷⁶ *Beasley v. Coggins* (Fla.), 37 South. 213.

⁷⁷ *Wyman v. Mathews*, 53 Fed. 678 (unpreferred creditor may sue to obtain *pro rata*); *Talley v. Curtain*, 4 C. C. A. 177, 54 Fed. 43. It is generally said that mere insolvency will not warrant relief: *Ginn v. Brown*, 14 R. I. 524.

⁷⁸ *Kalmus v. Ballin*, 52 N. J. Eq. 290, 46 Am. St. Rep. 520, 28 Atl. 791; *Spelman v. Freedman*, 130 N. Y. 421, 29 N. E. 765; *Burnham v. Dillon*, 100 Mich. 352, 59 N. W. 176 (by virtue of statute).

⁷⁹ See 4 Pom. Eq. Jur., § 1415, note 8, and cases cited; *Chicago & A. Bridge Co. v. Anglo-American etc. Co.*, 46 Fed. 584; *Taylor v. Branscombe*, 74 Iowa, 534, 38 N. W. 400; *Little v. Ragan*, 83 Ky. 321; *Barton v. Barton*, 80 Ky. 212; *Coulson v. Saltsman* (Neb.), 98 N. W. 1055; *Hargreaves v. Tennis*, 63 Neb. 356, 88 N. W. 486 (*dictum*); *Stone v. Anderson*, 26 N. H. 506; *Perham v. Haverhill Fiber Co.*, 64 N. H. 2, 3 Atl. 312; *Hunt v. Field*, 9 N. J. Eq. 36, 57 Am. Dec. 365; *Bliss v. Hornthal*, 33 App. Div. 225, 53 N. Y. Supp. 493; *Bates v. Plonsky*, 62 How. Pr. 429; *Falconer v. Freeman*, 4 Sandf. Ch. 565; *Dawson v. Sims*, 14 Or. 561, 13 Pac. 506; *Fleischner v. Bank of McMinnville*, 36 Or. 553, 54 Pac. 884, 60 Pac. 603, 61 Pac. 345; *Johnson v. Heidenheimer*, 65 Tex. 263; *Evans v. Laughton*, 69 Wis. 138, 33 N. W. 573 (by statute). In *People v. Van Buren*, 136 N. Y. 252, 32 N. E. 775, 33 N. E. 743, attaching creditors were allowed an injunction in aid of their attachment suit before judgment.

has obtained a judgment in another state may obtain relief upon an attachment issued within the jurisdiction;⁸⁰ and that a resident creditor may resort to equity immediately upon obtaining an attachment against the property of a non-resident.⁸¹ Where, for any reason, the attachment creates no lien, it would seem that the bill should not be maintainable.⁸² The authorities are not unanimous, however, in supporting bills resting upon attachments. Many courts of the highest character refuse to recognize such liens as the basis for equitable interference; and much reason seems to favor their view.⁸³

§ 886. Steps Beyond Judgment—In Suits to Reach Assets not Subject to Execution.—What steps, if any, must a judgment creditor take before filing a creditor's bill? In determining this question, many courts have distinguished between two classes of cases. "The first—a creditor's suit, strictly so called—is where the creditor seeks to satisfy his judgment out of the equitable assets of the debtor which cannot be reached on execution.

⁸⁰ *Curry v. Glass*, 25 N. J. Eq. 108; *Taylor v. Branscombe*, 74 Iowa, 534, 38 N. W. 400; *Ward v. McKenzie*, 33 Tex. 297, 7 Am. Rep. 261.

⁸¹ *Little v. Ragan*, 83 Ky. 321.

⁸² *Clark v. Raymond*, 84 Iowa, 251, 50 N. W. 1068.

⁸³ *Aigeltinger v. Einstein*, 143 Cal. 609, 101 Am. St. Rep. 131, 77 Pac. 669 (quoting *Pom. Eq. Jur.*, § 1415); *Nordlinger v. Osttag*, 66 Ill. App. 661; *Detroit Copper & Brass Rolling Mills v. Ledwidge*, 162 Ill. 305, 44 N. E. 751 (affirming 58 Ill. App. 351); *Thurber v. Blanck*, 50 N. Y. 80. See, also, cases cited in *Pom. Eq. Jur.*, § 1415, note. The reasons for this view are well stated in *Aigeltinger v. Einstein*, 143 Cal. 609, 101 Am. St. Rep. 131, 77 Pac. 669. "Though the attachment is a specific lien, it is a lien of very uncertain tenure. It may be defeated by a dissolution on motion, or by a judgment in favor of defendants on the merits of the claim. Suits by attachment are common, and the writ issues without any order of the court and on affidavit of the creditor alone, alleging any one of the statutory grounds. No advantage would inure to the creditor, except in the mere matter of time, in sustaining the equitable action."

Generally in that class of cases the action cannot be brought until the creditor has exhausted his remedy at law by the issue of an execution, and its return unsatisfied. This is required because equity will not aid the creditor to collect his debt until the legal assets are exhausted, for until this is done he may have an adequate remedy at law."⁸⁴ A return of execution unsatisfied is accepted by the courts as proof of insolvency—that is, insolvency so far as assets which can be reached at law are concerned.⁸⁵ In some jurisdictions it is held that a return of execution is not the only evidence of insolvency that will be received; that insolvency is a fact

⁸⁴ *State Bank of Ceresco v. Belk* (Neb.), 94 N. W. 617, per Duffie, C. See the following cases distinguishing between the classes: *National Tube Works Co. v. Ballou*, 146 U. S. 523, 13 Sup. Ct. 165, 36 L. ed. 1070; *Schofield v. Ute Coal & Coke Co.*, 92 Fed. 269, 34 C. C. A. 334; *Logan v. Logan*, 22 Fla. 561, 1 Am. St. Rep. 212; *Wisconsin Granite Co. v. Gerrity*, 144 Ill. 77, 33 N. E. 31; *French v. Commercial Nat. Bank*, 199 Ill. 213, 65 N. E. 252; *Detroit Copper & Brass Rolling Mills v. Ledwidge*, 162 Ill. 305, 44 N. E. 751; *Parish v. Lewis, Freem.* (Miss.) 299; *Fleming v. Grafton*, 54 Miss. 79; *Geery v. Geery*, 63 N. Y. 252. To the effect that execution must be returned *nulla bona*, see *Kittel v. Augusta, T. & G. R. Co.*, 65 Fed. 859; *Vandegriff v. Medlock*, 3 Port. 389, 29 Am. Dec. 256; *Herrlich v. Kaufmann*, 99 Cal. 271, 37 Am. St. Rep. 50, 33 Pac. 857 (citing *Pom. Eq. Jur.*, § 1415); *Clark v. Bert*, 2 Kan. App. 407, 42 Pac. 733; *Baxter v. Moses*, 77 Me. 465, 52 Am. Rep. 783; *Eames v. Manley*, 121 Mich. 300, 80 N. W. 15; *Grenell v. Ferry*, 110 Mich. 262, 68 N. W. 144; *Albright v. Texas, S. F. & N. R. Co.*, 8 N. Mex. 422, 46 Pac. 448; *Brown v. Barker*, 74 N. Y. Supp. 43, 68 App. Div. 592; *Menkler v. United States Sheep Co.*, 4 N. D. 507, 62 N. W. 594, 33 L. R. A. 546; *Stone v. Westcott*, 18 R. I. 517, 28 Atl. 662. See, also, cases cited in *Pom. Eq. Jur.*, § 1415, note.

⁸⁵ The fact that the debtor may have property in another county is no defense: *Thompson v. La Rue*, 59 Neb. 614, 81 N. W. 612. See, also, *Whiteside v. Hoskins*, 20 Mont. 361, 51 Pac. 739 (unnecessary to find that debtor is insolvent when execution returned unsatisfied); *Wade v. Ringo*, 62 Mo. App. 414; *Fryberger v. Berven*, 88 Minn. 311, 92 N. W. 1125; *Dimond v. Rogers*, 203 Ill. 464, 67 N. E. 968. See, however, *Fuller v. Brown*, 76 Hun, 557, 28 N. Y. Supp. 189.

which may be proved by any competent evidence.⁸⁶ There would seem to be strong reasons in favor of this view, although it has not been generally adopted.

§ 887. Same—In Suits to Remove Fraudulent Obstructions.

“The second class of cases is where property legally liable to execution has been fraudulently conveyed or incumbered by the debtor, and the creditor brings the action to set aside the conveyance or incumbrance as an obstruction to the enforcement of his lien; for, though the property might be sold on execution notwithstanding the fraudulent conveyance, the creditor will not be required to sell a doubtful or obstructed title. In the latter class of cases the prevailing doctrine is that it is not necessary to allege that an execution has been returned unsatisfied, or that the debtor has no other property out of which the judgment can be satisfied; for that is not the ground upon which the court of equity assumes to grant relief in such cases, but upon the theory that the fraudulent conveyance is an obstruction which prevents the creditor’s lien from being efficiently enforced upon the property. As to the creditor the conveyance is void, and he has a right to have himself placed in the same position as if it had not been made. The fact that other property has been retained by the debtor may be evidence that the conveyance is not fraudulent, but, if the grantee’s title be tainted with fraud, he has no right to say that all other means to satisfy the debt shall be exhausted before he shall be disturbed.”⁸⁷ In most jurisdictions, the docketing of a

⁸⁶ *Case v. Beauregard*, 101 U. S. 688, 25 L. ed. 1004; *Tittman v. Thornton*, 107 Mo. 500, 17 S. W. 979, 16 L. R. A. 410; *Ryan v. Spieth*, 18 Mont. 45, 44 Pac. 403. See, also, cases cited *pro* and *con*, in *Pom. Eq. Jur.*, § 1415, note.

⁸⁷ *State Bank of Ceresco v. Belk* (Neb.), 94 N. W. 617, per Duffie, C. See, also, *National Tube Works Co. v. Ballou*, 146 U. S. 523,

judgment creates a lien upon the debtor's realty within the county. It is generally held that the judgment must be a lien upon the property in order to warrant relief, and accordingly a judgment without execution is

13 Sup. Ct. 165; *Schofield v. Ute Coal & Coke Co.*, 92 Fed. 269, 34 C. C. A. 334; *Detroit Copper & Brass Rolling Mills v. Ledwidge*, 162 Ill. 305, 44 N. E. 751; *Wisconsin Granite Co. v. Gerrity*, 144 Ill. 77, 33 N. E. 31; *Parish v. Lewis*, *Freem.* (Miss.) 299; *Fleming v. Grafton*, 54 Miss. 79; *Geery v. Geery*, 63 N. Y. 252. "It is the inadequacy and not the utter futility of the remedy at law, which contains the jurisdiction in this class of cases; and the return of an execution unsatisfied is neither the sole nor the best evidence of this inadequacy. In many cases this inadequacy cannot be shown at all by the return of the execution, because it is possible to levy the same upon the property upon which the lien is fastened, and to sell this property thereunder, notwithstanding the fraudulent incumbrance or conveyance. The difficulty is that the fraudulent mortgage, trust deed, or other obstruction compels the purchaser under the execution to buy a lawsuit, and so depreciates the value of the property at the sale that the creditor's remedy is rendered insufficient, and sometimes without any practical value. . . . Moreover, the inadequacy of the remedy is generally measured by the value of the property upon which the lien has attached or in which the right is vested, and the depreciation in the value of this lien or right, caused by the fraudulent obstruction. The issue and return of an execution unsatisfied have no tendency to establish either of these facts": *Schofield v. Ute Coal & Coke Co.*, 92 Fed. 269, 34 C. C. A. 334, per Sanborn, Cir. J. To the effect that return of execution is not necessary in cases of this class, see in addition to cases already cited, *Lazarus Jewelry Co. v. Steinhardt*, 112 Fed. 614, 50 C. C. A. 393; *Dillman v. Nadelhoffer*, 162 Ill. 625, 45 N. E. 680; *Scott v. Aultman Co.*, 211 Ill. 612, 103 Am. St. Rep. 215, 71 N. E. 112; *Quinn v. People*, 45 Ill. App. 547; *Stone v. Manning*, 2 Scam. 534, 35 Am. Dec. 119; *Miller v. Davidson*, 3 Gilm. 522, 44 Am. Dec. 715; *Greenway v. Thomas*, 14 Ill. 271; *Weightman v. Hatch*, 17 Ill. 286; *Shufeldt v. Boehm*, 96 Ill. 563; *Austin v. First Nat. Bank*, 47 Ill. App. 224; *French v. Commercial Nat. Bank*, 79 Ill. App. 110; affirmed, 199 Ill. 213, 65 N. E. 252; *Metzger v. Burnett*, 5 Kan. App. 374, 48 Pac. 599; *Gibbons v. Pemberton*, 101 Mich. 397, 45 Am. St. Rep. 417, 59 N. W. 663; *Wilson v. Addison*, 127 Mich. 680, 8 Detroit Leg. N. 575, 87 N. W. 109; *Wadsworth v. Schisselbauer*, 32 Minn. 84, 19 N. W. 390; *Grandin v. First Nat. Bank* (Neb.), 98 N. W. 70; *Dunham v. Cox*, 10 N. J. Eq. 437, 64 Am. Dec. 460; *Multnomah St. R. Co. v. Harris*, 13 Or. 198, 9 Pac. 402; *Cornell v. Radway*, 22 Wis. 260; *Level Land Co. v. Sivyver*,

not sufficient to authorize a court to set aside a fraudulent transfer of personal property.⁸⁸ On the other hand, it is held in some states, in regard to realty, that it is not necessary that the judgment should be a lien.⁸⁹ Some states require a return of execution *nulla bona* in all cases, including cases of fraudulent conveyances.⁹⁰

112 Wis. 442, 88 N. W. 317 (not necessary when judgment is a lien). See, also, *Miller v. Dayton*, 47 Iowa, 312. In Michigan, the execution must, in cases of fraudulent conveyances, be levied on the property, but need not be returned unsatisfied: *Eames v. Manley*, 121 Mich. 300, 80 N. W. 15. To the effect that execution must issue, but need not be returned, see *Kittel v. Augusta, T. & G. R. Co.*, 65 Fed. 859. See, also, cases cited in *Pom. Eq. Jur.*, § 1415, note.

⁸⁸ *Beardsley Scythe Co. v. Foster*, 36 N. Y. 561; *Brinkerhoff v. Brown*, 4 Johns. Ch. 671; *Chandler v. Colcord*, 1 Okla. 260, 32 Pac. 330; *Chamberlayne v. Temple*, 2 Rand. 384, 14 Am. Dec. 786. But see *Hall v. Nash*, 58 N. J. Eq. 554, 43 Atl. 683; affirming 39 Atl. 374 (delivery of writ to sheriff is sufficient; statute makes writ bind goods from such time); *Falker v. Linehan*, 88 Iowa, 641, 55 N. W. 503 (not necessary that there be a lien when execution has been returned unsatisfied); *Matlock v. Babb*, 31 Or. 516, 49 Pac. 873 (if execution is issued so that there is a lien on the property, there need be no return *nulla bona*).

⁸⁹ *Wiltse v. Flack*, 115 Iowa, 51, 87 N. W. 729; *Lanahan v. Caffrey*, 57 N. Y. Supp. 724, 40 App. Div. 124. *Contra*: *Gilbert v. Stockman*, 81 Wis. 602, 29 Am. St. Rep. 922, 51 N. W. 1076, 52 N. W. 1045 (judgment is not a lien on property fraudulently conveyed). See, also, cases collected in *Pom. Eq. Jur.*, § 1415, note.

⁹⁰ "For if there is other property sufficient for that purpose it is an act of capricious intermeddling with the contracts of others to permit him to interfere to set it aside": *Meux v. Anthony*, 11 Ark. (6 Eng.) 411, 52 Am. Dec. 274. See, also, *Brown v. John V. Farwell Co.*, 74 Fed. 764; *Halbert v. Grant*, 4 T. B. Mon. 581; *Spooner v. Travelers' Ins. Co.*, 76 Minn. 311, 77 Am. St. Rep. 651, 79 N. W. 305 (plaintiff must prove that he has no legal remedy, that the debtor is insolvent, and has no other property from which the debt might be satisfied; the "best, and as a rule, the only, evidence of these facts, is the return of an execution *nulla bona*"). It has been held that the return of the execution unsatisfied is necessary when the conveyance is assailed as merely voluntary, for in such case it cannot appear that any wrong has been done until it is shown that the debtor has not the means of paying the debt with property other than that covered by the contested conveyance: *National Bank v.*

§ 883. **What is a Sufficient Return of Execution.**—An execution, in order to form part of the basis for a creditor's bill, should be directed to and returned from either the county where the judgment was obtained or where the debtor resides. A return of an execution issued to another county is not sufficient.⁹¹ A return made by the sheriff before the return day named in the writ, at the order of the plaintiff's attorney, is sufficient if it appears that the sheriff has made demand and has been unable to find any property;⁹² otherwise, such a return is insufficient.⁹³ It has been held that a return showing merely that there is no personal property is not sufficient;⁹⁴ and for this reason, a return of a constable who has no authority to levy on realty, will not support a creditor's bill.⁹⁵

§ 889. **Limitations and Laches.**—Under the reformed system of procedure in many of the states, the statute of limitations is made to apply to equitable actions, and accordingly, creditors' suits come within its provisions. Cases where the question generally arises are those in

Kinard, 28 S. C. 101, 112, 5 S. E. 464; *Compton v. Patterson*, 28 S. C. 152, 5 S. E. 470.

⁹¹ *Nashville, C. & St. L. R. Co. v. Mattingly*, 101 Ky. 219, 40 S. W. 673; *Proctor v. Bell's Admr.*, 97 Ky. 98, 30 S. W. 15; *Minkler v. United States Sheep Co.*, 4 N. D. 507, 62 N. W. 594, 33 L. R. A. 546. To the effect that a return from the county of residence is sufficient, see *Martin v. Byrd*, 19 Ky. Law Rep. 1030, 42 S. W. 1112; *Minneapolis Threshing Machine Co. v. Hanrahan*, 9 S. D. 520, 70 N. W. 656. See, also, cases cited in *Pom. Eq. Jur.*, § 1415, note. See, however, *Durand v. Gray*, 129 Ill. 9, 129 N. E. 610.

⁹² *Illinois Malleable Iron Co. v. Graham*, 55 Ill. App. 266; *Howe v. Babcock*, 72 Ill. App. 68; *Mehler v. Cornwell*, 3 App. D. C. 92.

⁹³ *Scheubert v. Honel*, 50 Ill. App. 597 (affirmed 152 Ill. 313, 38 N. E. 913); *Dunderdale v. Westinghouse Electric Co.*, 51 Ill. App. 407; *Hartley v. Atkins*, 64 Ill. App. 502.

⁹⁴ *Bayley v. Bayley* (N. J. Eq.), 57 Atl. 271 (for the reason that plaintiff has not exhausted his legal remedy).

⁹⁵ *Stuckwisch v. Holmes*, 29 Ind. App. 512, 64 N. E. 894.

which the creditor seeks to set aside a fraudulent conveyance. The general form of statute as to fraud is that the action is barred after a certain named time from the discovery of the fraud.⁹⁶ Even in a case where the fraud is discovered, however, it is generally held that time does not begin to run until the right to maintain a creditor's bill accrues.⁹⁷ As to when the right does accrue there is not unanimity of opinion, but most courts hold that, at least, a judgment must be obtained at law. This question has been fully discussed in the preceding paragraphs. In some states it is held that the recording of the deed is sufficient notice of the fraud.⁹⁸ As stated in a recent case, "the statute runs

⁹⁶ *Farrar v. Bernheim*, 75 Fed. 136, 21 C. C. A. 264; *Arnett v. Coffey*, 5 Colo. App. 560, 39 Pac. 894; *Fox v. Lipe*, 14 Colo. App. 258, 59 Pac. 850; *Finch v. Kent*, 24 Mont. 268, 61 Pac. 653; *Gillespie v. Cooper*, 36 Neb. 775, 55 N. W. 302; *Vodrie v. Tynan* (Tex. Civ. App.), 57 S. W. 680.

⁹⁷ *Washington v. Norwood*, 128 Ala. 383, 30 South. 405; *Ohm v. Superior Court*, 85 Cal. 545, 20 Am. St. Rep. 245, 26 Pac. 244; *Brown v. Campbell*, 100 Cal. 635, 38 Am. St. Rep. 314, 35 Pac. 433; *McMannomy v. Chicago etc. R. Co.*, 167 Ill. 497, 47 N. E. 712; *Gans v. Marx*, 25 Tex. Civ. App. 497, 61 S. W. 527; *Brundage v. Cheneworth*, 101 Iowa, 256, 63 Am. St. Rep. 382, 70 N. W. 211; *Gates v. Andrews*, 37 N. Y. 657, 97 Am. Dec. 764; *Weaver v. Haviland*, 142 N. Y. 534, 40 Am. St. Rep. 631, 37 N. E. 641; *Blackwell v. Hatch*, 13 Okla. 169, 73 Pac. 933.

⁹⁸ Thus, in *Mickle v. Walraven*, 92 Iowa, 423, 60 N. W. 633, it was held that where a deed which is fraudulent as against creditors is spread upon the records, notice to the world is given of its character, or at least sufficient information is conveyed thereby, in the absence of special circumstances, to put the creditor on inquiry as to its contents and character. To the same effect, see *Sims v. Gray*, 93 Iowa, 38, 61 N. W. 171; *Vashon v. Barrett*, 99 Va. 344, 38 S. E. 200. Compare *Jones v. Danforth* (Neb.), 99 N. W. 495. It is incumbent upon plaintiff to show, not only that he did not discover the fraud, but that the exercise of ordinary diligence on his part would not have led to the discovery: *Poynter v. Mallory*, 20 Ky. Law Rep. 284, 45 S. W. 1042; *Green v. Salmon*, 23 Ky. Law Rep. 517, 63 S. W. 270; *Vodrie v. Tynan* (Tex. Civ. App.), 57 S. W. 680. In *Howell v. Thompson*, 95 Tenn. 396, 32 S. W. 309, it was held

from the time the mistake, by ordinary diligence, ought to have been discovered."⁹⁹ In some jurisdictions it is held that a creditor, having notice of a fraud, must reduce his claim to judgment within a reasonable time and then bring the creditor's bill.¹⁰⁰ The statute begins to run at the expiration of this reasonable time. Of course, in states where it is not necessary to reduce a claim to judgment before maintaining the creditor's bill, the statute begins to run from the time of the discovery.¹⁰¹ The circumstances which prevent the running of the statute are the same as those which apply generally. The mere fact that a debtor has fought an action at law so persistently that the creditor has not filed a bill, is not sufficient excuse.¹⁰² If an action is brought by one creditor in time, it is immaterial, so far as the statute of limitations is concerned, at what time

that the right of action accrues from the time the conveyance is made. In *McCue v. McCue*, 41 W. Va. 151, 23 S. E. 689, it was held that a creditor must bring suit within five years from the conveyance, unless he shows that it was fraudulent in fact—that is, procured to be made with some dishonest intention; it is not enough to show it to be fraudulent in law, under the statute, by reason of being voluntary. As to the statutory bar to right to set aside a preferential assignment, see *Smith v. Smith*, 48 W. Va. 51, 35 S. E. 876. In *Daniel v. Palmer*, 124 Mich. 335, 82 N. W. 1067, it was held that a creditor must sue within a year from the time of levy.

⁹⁹ *Green v. Salmon*, 23 Ky. Law Rep. 517, 63 S. W. 270. See, also, *Brasie v. Minneapolis Brewing Co.*, 87 Minn. 456, 94 Am. St. Rep. 709, 92 N. W. 340.

¹⁰⁰ *Stubblefield v. Gadd*, 112 Iowa, 681, 84 N. W. 917. In this case the court, speaking of the time of the discovery of the fraud, said: "Ordinarily, the statute would begin to run at that time. But plaintiff had not reduced his claim to judgment, and consequently could not attack the conveyance. Having notice of the fraud, it was his duty to do so, however, in a reasonable time, and to bring a creditor's bill to subject the land to the payment of his judgment."

¹⁰¹ *Gillespie v. Cooper*, 36 Neb. 775, 55 N. W. 302.

¹⁰² *State v. Osborne*, 143 Ind. 671, 42 N. E. 921.

the intervening creditors become parties; for, as each creditor appears and proves his claim, he has a right to be considered a party complainant from the beginning.¹⁰³ Of course a creditor whose claim is barred by the statute of limitations cannot maintain a bill to set aside a fraudulent conveyance.¹⁰⁴

It is generally held that the extension of the statute of limitations to equitable remedies does not abolish the equitable doctrine of laches. Professor Pomeroy, in his *Code Remedies*,¹⁰⁵ says: "Not a provision is to be found in the code of any state adopting the new system which requires, suggests, or even intimates an abrogation of equitable primary rights, or equitable remedies and remedial rights. . . . The change provided for is not in primary rights, nor in remedies, but in the methods, means, and instruments by which these primary rights are to be maintained and these remedies secured." Mere delay does not always, in and of itself, constitute laches. As stated in a recent case, the effect of the statute of limitations is to eliminate "the requirement of excusatory facts in a bill purely equitable of mere delay in time when the suit is commenced within a period fixed by the statute."¹⁰⁶ The result is that the right to maintain a creditor's bill may be barred by laches although the statutory time has not run.¹⁰⁷ Thus,

¹⁰³ *Dunne v. Portland St. Ry. Co.*, 40 Or. 295, 65 Pac. 1052.

¹⁰⁴ *Grimmett v. Midgett* (Tenn. Ch. App.), 57 S. W. 399; *McClenney v. McClenney*, 3 Tex. 192, 49 Am. Dec. 738.

¹⁰⁵ Pomeroy, *Code Remedies*, § 56.

¹⁰⁶ *Gay v. Havermale*, 27 Wash. 390, 67 Pac. 804.

¹⁰⁷ *Wall v. Beedy*, 161 Mo. 625, 61 S. W. 864; *Neppach v. Jones*, 20 Or. 491, 23 Am. St. Rep. 145, 26 Pac. 569, 849; *Kinmouth v. Walling* (N. J.), 36 Atl. 891. But in *Burne v. Partridge*, 61 N. J. Eq. 434, 48 Atl. 770, where, fifteen years after obtaining a judgment a creditor filed a bill to set aside a conveyance of land made pending the suit in which the judgment was obtained, it was held that the delay was no bar to the right to set the conveyance aside;

it has been held that where a party has slept upon his rights for a period of nine years, with knowledge of the fraudulent character of the deed sought to be invalidated, and has allowed the opposite party to spend his money, or waits until the lands have greatly increased in value, either from such expenditure or otherwise, a court of equity might properly refuse to interfere, although the statute of limitations has not run.¹⁰⁸ From the foregoing it would seem that the rule is that lapse of time coupled with circumstances which would render it inequitable to grant relief by a creditor's bill, will be a bar, whether the statutory period has elapsed or not.¹⁰⁹

the bill being one for equitable aid to enforce a legal right, which was not barred.

108 *Wall v. Beedy*, 161 Mo. 625, 61 S. W. 864. See, also, *Hamilton v. Menominee Falls Quarry Co.*, 106 Wis. 352, 81 N. W. 876.

109 In many of the cases no reference is made to the statute. In the following cases relief was refused because of laches: *Strutton v. Young*, 15 Ky. Law Rep. 657, 25 S. W. 109; *Frenche v. Kitchen*, 53 N. J. Eq. 37, 30 Atl. 815; *Coyne v. Sayre*, 54 N. J. Eq. 702, 36 Atl. 96; *Call v. Cozart* (Tenn. Ch. App.), 48 S. W. 312; *Herold v. Barlow*, 47 W. Va. 750, 36 S. E. 8; *Mickel v. Walraven*, 92 Iowa, 423, 60 N. W. 633; *Stacker v. Wilson* (Tenn. Ch. App.), 52 S. W. 709. In *Fosdick v. Lowell Machine Shop*, 58 Fed. 817, a discovery was sought in aid of an attachment. The complainant had lived in the same town with the debtor for nine years, and took no steps until after his death. It was held that there was such gross laches as to prevent relief—that when plaintiff is guilty of gross laches, equity will decline to interfere under a bill of discovery, as under a bill for relief. Where for three years the complainant had affirmed transfers, and had attempted to have them declared to be assignments for benefit of creditors, and had known all the facts for two years, it was held that he was barred from maintaining a creditor's bill: *Hildebrand v. Tarbell*, 97 Wis. 446, 73 N. W. 53. In *Bumgardner v. Harris*, 92 Va. 188, 23 S. E. 229, it was held that a creditor is not guilty of laches in failing to assert a claim so long as he has a judgment recognizing his rights. A bill filed by a judgment creditor seeking to reach property fraudulently conveyed, which discloses a constant and successful effort on the part of defendants to cover up and withhold from complainant any information with respect to the actual consideration of the conveyances,

§ 890. Who may Bring Suit.—Primarily, a creditor's suit must be brought by a creditor who has fulfilled the requirements described in the preceding sections.¹¹⁰ An assignee of such a creditor is also allowed to sue;¹¹¹ and his right to set aside a fraudulent conveyance is unaffected by the principle that causes of action for fraud are not assignable.¹¹² In some jurisdictions it is held that after a valid assignment for the benefit of creditors, such assignee is the only party who can sue;¹¹³

sufficiently excuses complainant's delay in bringing suit: *Lant v. Manley*, 75 Fed. 627, 21 C. C. A. 457. It must appear that complainant had notice of the fraud: *Bank of Charleston N. B. A. v. Dowling*, 52 S. C. 345, 29 S. E. 788. In the following cases it was held that there was no laches: *Applegate v. Applegate*, 107 Iowa, 312, 78 N. W. 34; *Newlove v. Pennock*, 123 Mich. 260, 82 N. W. 54.

110 See *ante*, §§ 882-888. Therefore one who has no enforceable claim against a married woman for goods cannot maintain a bill to have persons to whom she has sold the goods pay plaintiff: *Levis Zukoski Mercantile Co. v. Bowers*, 105 Tenn. 138, 58 S. W. 287.

However, a purchaser on execution may maintain a bill to cancel a fraudulent conveyance as a cloud on title. It is obvious that such suits have little in common with creditors' bills. For examples of such suits, see *Farrar v. Bernheim*, 74 Fed. 435, 20 C. C. A. 496, 41 U. S. App. 172; *Smith v. Reid*, 134 N. Y. 568, 31 N. E. 1082; *Wagner v. Law*, 3 Wash. St. 500, 28 Am. St. Rep. 56, 28 Pac. 1109, 15 L. R. A. 784; *Hager v. Shindler*, 29 Cal. 48; *Lindell Real Estate Co. v. Lindell*, 133 Mo. 386, 33 S. W. 466; *Watson v. Mead*, 98 Mich. 330, 57 N. W. 181; *Phillips v. Kesterson*, 154 Ill. 572, 39 N. E. 599. And he may have this relief although he bought the land for a small sum on account of the conveyance: *Wagner v. Law*, *supra*.

111 *Wehrman v. Conklin*, 155 U. S. 314, 15 Sup. Ct. 129, 39 L. ed. 167; *Schaferman v. O'Brien*, 28 Md. 565, 92 Am. Dec. 708; *Rose v. Dunklee*, 12 Colo. App. 403, 56 Pac. 342; *Noble v. McKeith*, 127 Mich. 163, 8 Detroit Leg. N. 281, 86 N. W. 526. It follows that an owner of a judgment who assigns it as collateral security cannot maintain a creditor's bill unless the assignee refuses to bring suit under circumstances calculated to prejudice the assignor's right: *Andrews v. Kibbee*, 12 Mich. 94, 83 Am. Dec. 766.

112 *Howd v. Breckenridge*, 97 Mich. 65, 56 N. W. 221; *National Val. Bank v. Hancock*, 100 Va. 101, 93 Am. St. Rep. 933, 40 S. E. 611.

113 *Valley Lumber Co. v. Hogan*, 85 Wis. 366, 55 N. W. 415; *McNaney v. Hall*, 159 N. Y. 544, 54 N. E. 1093; *Wimpfheimer v.*

although if he refuses, a bill may be filed by any creditor. A trustee in bankruptcy may, likewise, bring the suit.¹¹⁴ A surety who pays a judgment has a right to maintain a bill without obtaining judgment himself, for he succeeds to the rights of the judgment creditor.¹¹⁵ Before payment, however, he is not entitled to sue.¹¹⁶

§ 891. *Parties Defendant.*—The courts are not agreed as to who are necessary parties to the bill. The jurisdictions which require suit to be brought on behalf of all the creditors allow all creditors to be made parties; but it is doubtful if all are necessary parties in any jurisdiction. It would seem that the debtor should be made a party, for he is vitally interested in the outcome, and his rights are directly affected.¹¹⁷ The party who has possession of the property sought to be reached must be joined.¹¹⁸ It is a general, though not universal, proposition, that all who have interests which will be affected by the decree in the property sought to be reached must be made parties.¹¹⁹

Perrine (N. J. Eq.), 50 Atl. 356. See, also, *Taylor v. Seiter*, 199 Ill. 555, 65 N. E. 433.

¹¹⁴ *Schmitt v. Dahl*, 88 Minn. 506, 93 N. W. 665.

¹¹⁵ *Partlow v. Lane*, 42 Ky. (3 B. Mon.) 424, 39 Am. Dec. 473; *Shapira v. Paletz* (Tenn. Ch. App.), 59 S. W. 774; *Hawker v. Moore*, 40 W. Va. 49, 20 S. E. 848; *Lyon v. Bolling*, 9 Ala. 463, 44 Am. Dec. 444.

¹¹⁶ *Williams v. Tipton*, 24 Tenn. (5 Humph.) 66, 42 Am. Dec. 420. But see *Thomson v. Crane*, 73 Fed. 327.

¹¹⁷ *Ferguson v. Ann Arbor R. Co.*, 17 App. Div. 336, 45 N. Y. Supp. 172; *United States v. Howland*, 4 Wheat. (17 U. S.) 108, 4 L. ed. 526.

¹¹⁸ *Dobbins v. Coles*, 59 N. J. Eq. 80, 45 Atl. 444.

¹¹⁹ Thus, in a suit by a creditor of an insured, after a loss, to restrain disposition of remainder and to subject funds due under a policy to payment of judgment, a prior assignee is a necessary party: *State v. Superior Court*, 14 Wash. 686, 45 Pac. 670. Beneficiaries of an implied trust known to creditor must be made parties: *Marshall's Exr. v. Hall*, 42 W. Va. 641, 26 S. E. 300. In *Massachu-*

In suits to set aside fraudulent conveyances, all whose interests will be prejudiced by a decree setting aside the conveyance must be made parties. As in the case of other creditors' bills, the debtor, who is either the fraudulent grantor or the party who secures the conveyance, should, it is generally held, be made a party.¹²⁰ In addition, the fraudulent grantee must be joined, for his interests are usually the most important at stake.¹²¹ Where there are several fraudulent conveyances, the several grantees may be joined as defendants in one action.¹²² "The object and purpose of the suit is single, the satisfaction of the demands of the creditors from the property of the debtor, and all that can be said is, that different persons have, or claim to have,

setts, under St. 1884, c. 285, § 1, it is not indispensable, however, to make trustees parties in actions to reach the interest of the beneficiaries. The court merely orders the *cestui* to convey his equitable interest: *Russell v. Burke*, 180 Mass. 543, 62 N. E. 963. A creditor who has compounded with one of several joint obligors may maintain a creditor's bill against the other obligors without making the released obligor a party: *Penn v. Bahnson*, 89 Va. 253, 15 S. E. 586.

¹²⁰ *J. B. Brown Co. v. Henderson*, 123 Ala. 623, 26 South. 199; *Cedar Rapids Nat. Bank v. Lavery*, 110 Iowa, 575, 80 Am. St. Rep. 328, 81 N. W. 775; *Miller v. Wilkerson*, 10 Kan. App. 576, 62 Pac. 253; *Bevins v. Eisman*, 21 Ky. Law Rep. 1772, 56 S. W. 410; *First Nat. Bank v. Gibson* (Neb.), 94 N. W. 965; *First Nat. Bank v. Shuler*, 153 N. Y. 163, 60 Am. St. Rep. 601, 47 N. E. 262; *Lawrence v. Bank of Republic*, 35 N. Y. 320. But see *First Nat. Bank v. Wright*, 38 App. Div. 2, 56 N. Y. Supp. 308; *Schneider v. Patton*, 175 Mo. 684, 75 S. W. 155; *Homestead Min. Co. v. Reynolds*, 30 Colo. 330, 70 Pac. 422. In *Blanc v. Paymaster Min. Co.*, 95 Cal. 524, 29 Am. St. Rep. 149, 30 Pac. 765, it was held that a fraudulent grantor is a proper but not a necessary party. For authorities *pro* and *con*, see *Weightman v. Washington Critic Co.*, 4 App. D. C. 136.

¹²¹ *Cook v. Lake*, 50 App. Div. 92, 63 N. Y. Supp. 818; *Adkins v. Loucks*, 107 Wis. 587, 83 N. W. 934. But a grantee who has conveyed his interest is not a necessary party: *Bomar v. Means*, 37 S. C. 520, 34 Am. St. Rep. 772, 16 S. E. 537.

¹²² *Gassenheimer v. Kellogg*, 121 Ala. 109, 26 South. 29; *Burke v. Morris*, 121 Ala. 126, 25 South. 759.

separate interests in distinct or independent questions connected with, or springing out of that common purpose."¹²³ Where the grantor or grantee is dead, his executors, administrators, or heirs are necessary parties, according to the law of the jurisdiction as to what party is the representative of a deceased person in suits relating to his property.¹²⁴ A party in possession of the property, although he be the sheriff in case of a collusive attachment, must be joined.¹²⁵ The trustees of all deeds of trust on property sought to be sold, and all the creditors named therein, are necessary parties.¹²⁶ In some jurisdictions it is held that the *cestui* of a trust deed is not a necessary party, for the defense of the trustee is the defense of the *cestui*. The court may in its discretion, however, allow the *cestui* to become a party.¹²⁷ Where a fraudulent grantee assumes a mortgage on property, the mortgagee must be joined.¹²⁸ In all the cases the test seems to be whether one has an interest in the property which cannot be taken from him without giving him a chance to be heard.¹²⁹ It is not necessary to join those whose interests will not be affected by the decree.¹³⁰

¹²³ *Lehman v. Meyer*, 67 Ala. 396.

¹²⁴ *Simon v. Sabb*, 56 S. C. 38, 33 S. E. 799; *Sloan v. Hunter*, 56 S. C. 385, 76 Am. St. Rep. 551, 34 S. E. 658.

¹²⁵ *Plaster v. Throne-Franklin Shoe Co.*, 123 Ala. 360, 26 South. 225; *Sloan v. Hunter*, 56 S. C. 385, 76 Am. St. Rep. 551, 34 S. E. 658.

¹²⁶ *Carnahan v. Ashworth* (Va.), 31 S. E. 65.

¹²⁷ *Winslow v. Minnesota & P. R. Co.*, 4 Minn. 313, 77 Am. Dec. 519.

¹²⁸ *Smiser v. Stevens-Wolford Co.'s Assignee*, 20 Ky. Law Rep. 501, 45 S. W. 357.

¹²⁹ Thus, a petition to cancel a chattel mortgage as a fraudulent preference must join as parties all the accepting creditors: *Cleveland v. People's Nat. Bank* (Tex. Civ. App.), 49 S. W. 523.

¹³⁰ Thus, a prior mortgagee need not be made a party to a bill to set aside a fraudulent conveyance, because his interest ordinarily is not affected: *Freeman v. Stewart*, 119 Ala. 158, 24 South. 31. In a suit to set aside conveyance by one co-tenant, other co-tenants

§ 892. Joinder of Parties Plaintiff—One Creditor Suing in Behalf of Others.—Several and separate judgment creditors may unite in an action to remove a fraudulent conveyance made by their common debtor, since they have a common interest in the relief sought;¹³¹ and in those states where simple contract creditors are authorized by statute to sue, they may join as plaintiffs with judgment creditors.¹³² If the plaintiff professes to sue both for himself and for such other creditors as may choose to come in and share in the expenses of the suit, it is obvious that he gains no priority over such creditors in the distribution of the proceeds of the suit.¹³³ In such

need not be joined: *Watts v. Burgess* (Ala.), 23 South. 763. Where an execution is levied on land of one judgment debtor, a creditor's bill to set aside a mortgage as fraudulent may be maintained against one without joining others: *Hodge v. Gray*, 110 Mich. 654, 68 N. W. 979. Where a bill seeks only an account from fraudulent grantees, all their grantees need not be made parties: *Arnot v. Birch*, 29 App. Div. 356, 51 N. Y. Supp. 491. Where no account for rents and profits is asked, it is not necessary to make a receiver of rents and profits, appointed long after the conveyance was made, a party: *Daisy Roller Mills v. Ward*, 6 N. D. 317, 70 N. W. 271. Where a firm creditor files a bill against one partner to set aside a fraudulent conveyance of property alleged to have been bought with partnership funds, the other partner is not a necessary party: *Brooks v. Lowenstein*, 124 Ala. 158, 27 South. 520. In *Miller v. Wilkerson*, 10 Kan. App. 576, 62 Pac. 253, the defendant, by cross-bill, alleged that the conveyance to plaintiff was fraudulent as to creditors. The grantor was not a party. The court said: "It was necessary that she should be, before the court could grant affirmative relief, but it was not necessary that she should be before the court, that the defendants might show a want of equity in the plaintiff."

¹³¹ *Gates v. Boomer*, 17 Wis. 455; *Clarkson v. Depeyster*, 3 Paige, 320; *Bomar v. Means*, 37 S. C. 520, 34 Am. St. Rep. 772, 16 S. E. 537.

¹³² *Steiner v. Parker*, 108 Ala. 357, 19 South. 386; *Steiner Land & Lumber Co. v. King*, 118 Ala. 546, 24 South. 35.

¹³³ *Younger v. Massey*, 41 S. C. 50, 19 S. E. 125; *Haskin Wood Vulcanizing Co. v. Cleveland Shipbuilding Co.*, 94 Va. 439, 26 S. E. 878. But even where the suit is brought on behalf of all, the complainants cannot compel the payment of more than the claims of

a case the question may arise as to the power of the creditor who files the bill to control the proceedings. If other creditors have come in, or if an interlocutory judgment has been rendered establishing the rights of the parties, the original complainant cannot of his own motion dismiss the bill.¹³⁴ Where other creditors have not come in, however, it has been held that he may dismiss the bill.¹³⁵

In Alabama, a creditor is allowed to maintain a bill although other bills by other creditors on behalf of all are pending. "A creditor's bill filed to reach property fraudulently conveyed by a debtor on behalf of all other creditors who may see proper to come in and make themselves parties, will not preclude other creditors from proceeding in like manner by original bill, until there has been a decree upon the merits granting relief."¹³⁶

the creditors who come in: *McKissack v. Voorhees*, 119 Ala. 101, 24 South. 523.

¹³⁴ *Salisbury v. Binghampton Pub. Co.*, 85 Hun, 99, 32 N. Y. Supp. 652; *Hirshfield v. Bopp*, 27 App. Div. 180, 50 N. Y. Supp. 676; *Slusher v. Simpkinson*, 101 Ky. 594, 40 S. W. 570, 43 S. W. 692; *Lewis v. Laidley*, 39 W. Va. 422, 19 S. E. 378. In *Shumate's Exrs. v. Crockett*, 43 W. Va. 491, 27 S. E. 240, the court said: "The debt of the plaintiffs was paid, but the suit was expressly for all lienors, and others had appeared and become parties, and that payment could not defeat the decree. The decree belonged to all, not one, of the creditors, and any creditor yet unpaid had a right to enforce it. It could go on in the name of the original plaintiffs, or, if anybody so asked, the plaintiff's name could be stricken out, and another creditor's name substituted."

¹³⁵ *Salisbury v. Binghampton Pub. Co.*, 85 Hun, 99, 32 N. Y. Supp. 652 (*dictum*). In *Schlagenhauf v. Craven*, 61 N. J. Eq. 232, 47 Atl. 804, it was held that a party who has not reduced his claim to judgment cannot object to a dismissal of the bill. In *Craig v. Hoge*, 95 Va. 275, 28 S. E. 317, it was said that a complainant can dismiss until there has been a reference.

¹³⁶ *Maxwell v. Peters Shoe Co.*, 109 Ala. 371, 19 South. 412; *Hall v. Alabama Terminal & Imp. Co.*, 104 Ala. 577, 53 Am. St. Rep. 87, 16 South. 439; *Talladega Mercantile Co. v. Jenifer Iron Co.*, 102 Ala. 259, 14 South. 743; *American Pig-Iron Storage Warrant Co. v. German*, 126 Ala. 194, 85 Am. St. Rep. 21, 28 South. 603.

§ 893. **Creditor Suing for Himself Obtains Priority.**—It is the general rule that in a judgment creditor's suit a single creditor may file a bill on his own behalf; that he is entitled to retain the priority thereby gained over other creditors, and cannot be forced to divide with them.¹³⁷ Three methods of proceeding are open to the creditor whose execution at law is returned unsatisfied, was the conclusion arrived at by Chancellor Walworth, in a leading case; that he "might file a bill to reach the

¹³⁷ *Senter v. Williams*, 61 Ark. 189, 54 Am. St. Rep. 200, 32 S. W. 490; *Elmore v. Spear*, 27 Ga. 193, 73 Am. Dec. 729; *Gordon v. Lowell*, 21 Me. 251; *George v. Williamson*, 26 Mo. 190, 72 Am. Dec. 203; *Pullis v. Robison*, 73 Mo. 201, 39 Am. Rep. 497; *McDermott v. Strong*, 4 Johns. Ch. 687; *Edmeston v. Lyde*, 1 Paige Ch. 637, 19 Am. Dec. 454; *Corning v. White*, 2 Paige, 567, 22 Am. Dec. 659; *Hammond v. Hudson R. I. & M. Co.*, 20 Barb. 378; *Clark v. Figgins*, 31 W. Va. 157, 13 Am. St. Rep. 860, 5 S. E. 643. In *Edgell v. Haywood*, 3 Atk. 357, it was said: "The person who first sues has an advantage by his legal diligence in all cases. The complainant, by his judgment and execution at law, and by his diligence in this court, has obtained a position which entitles him to a priority over the other creditors of the debtor." See, also, *Lopez v. Campbell*, 18 App. Div. 427, 46 N. Y. Supp. 91; *Cole v. Marple*, 98 Ill. 58, 38 Am. Rep. 83. But the filing of a creditor's bill gives no priority where it discovers no new assets nor avers facts which had not been sought to be taken advantage of by other parties previous to the filing of the bill: *John Spry Lumber Co. v. Chappell*, 184 Ill. 539, 56 N. E. 794 (affirming 85 Ill. App. 223).

The mere filing of a creditor's bill does not put the property *in custodia legis*. Therefore a judgment creditor who files a bill to set aside a trust deed as fraudulent does not acquire such a lien on the trust property as to render void a sale by the trustee pending suit, where the charge of fraud is not sustained: *McClurg v. McSpadden*, 101 Tenn. 433, 47 S. W. 698.

If, under the bankruptcy law of 1898, a petition in bankruptcy is filed against the debtor more than four months after the judgment is obtained against him, the creditor may pursue any remedy for enforcement of the judgment, notwithstanding the adjudication of bankruptcy; his right to maintain an equitable action to set aside a fraudulent transfer by the debtor does not vest in the trustee in bankruptcy; *Hillyer v. Le Roy* (N. Y.), 72 N. E. 237; see *Metcalf v. Barker*, 187 U. S. 165, 23 Sup. Ct. 67, 47 L. ed. 122.

equitable estate of the defendants, either in his own name and for his own benefit, or might join with others standing in the same situation in a joint suit for their joint benefit, in proportion to the amount due to each, . . . or that he might file a bill in the usual way, in behalf of himself and all others standing in the same situation, as judgment-creditors whose executions had been returned unsatisfied, and who might choose to come in under the decree, and contribute to the expenses of the suit. I can see no reasonable objection to either mode of proceeding. The latter, at the first blush, may appear the most equitable, but the two first are much more likely to insure a vigorous prosecution of the suit. And, on further examination, it may seem unjust that the creditor who has sustained all the risk and expense of bringing his suit to a successful termination, should in the end be obliged to divide the avails thereof with those who have slept upon their rights, or who have intentionally kept back that they might profit by his exertions, when there could no longer be any risk in becoming parties to the suit.”¹³⁸

138 *Edmeston v. Lyde*, 1 Paige, 637, 19 Am. Dec. 454. Further reasons for the rule that other creditors than the plaintiff in the judgment creditor's action cannot, as a matter of right, become parties thereto, are explained in a recent opinion: “A sixth class [of creditors' suits] is that now before the court, where a single judgment creditor of a living debtor obtains a lien upon real estate, or, by execution, on leviable chattels, and asks the aid of the court, either to perfect an equitable title already in the defendant in execution, or to set aside a fraudulent conveyance made by him to a third party. . . . [Pointing out distinction between this class and other so-called creditors' suits.] It is to be observed, in the first place, that no creditor can obtain any part of the proceeds of the sale of real estate of a living defendant, unless he has a judgment; or, of leviable chattels, unless he has an execution. In the next place, it is to be observed that, where a conveyance by the debtor is attacked as fraudulent and void as against a judgment creditor, an adjudication that the conveyance is void as to the complainant judgment creditor is not necessarily an adjudication that it is void

Since priority among different creditors' bills is gained by the creditor who first files his bill and serves process, it is said to be immaterial in what order the judgments which are the foundations of the different suits were recovered.¹³⁹ The priority is not defeated by the death of the debtor before judgment in the creditor's suit.¹⁴⁰

A few courts, however, making an application of the maxim, "Equality is equity," hold that all creditors should be let in, upon reasonable and appropriate applications, even where the bill is filed on behalf of one creditor alone, and allowed to participate in the proceeds of property fraudulently conveyed.¹⁴¹

as to all other judgment creditors, since it may be void as to one, and not as to another," etc.: *Pitney, V. C.*, in *Jauch v. De Socarras*, 56 N. J. Eq. 527, 39 Atl. 381.

¹³⁹ *Union Nat. Bank v. Lane*, 177 Ill. 171, 69 Am. St. Rep. 216, 52 N. E. 361, affirming *Lane v. Union Nat. Bank*, 75 Ill. App. 299; *Corning v. White*, 2 Paige, 567, 22 Am. Dec. 659; *Bridgman v. McKissick*, 15 Iowa, 260. But see *Haleys v. Williams*, 1 Leigh, 140, 19 Am. Dec. 743. As to priorities between judgment creditors and a simple contract creditor filing his bill, under statute, to set aside fraudulent conveyance, see *Geiser Mfg. Co. v. Chewning*, 52 W. Va. 523, 44 S. E. 193; *Foley v. Ruley*, 50 W. Va. 158, 40 S. E. 382, 55 L. R. A. 916.

¹⁴⁰ *Brown v. Nichols*, 42 N. Y. 26; *First National Bank v. Shuler*, 153 N. Y. 163, 60 Am. St. Rep. 601, 47 N. E. 262; *King v. Goodwin*, 130 Ill. 102, 17 Am. St. Rep. 277, 22 N. E. 533.

¹⁴¹ *Doherty v. Holliday*, 137 Ind. 282, 32 N. E. 315, 36 N. E. 907, and cases cited; *City of St. Louis v. O'Neill Lumber Co.*, 114 Mo. 74, 21 S. W. 484; *Craig v. Hoge*, 95 Va. 275, 28 S. E. 317; *Hunt v. Field*, 9 N. J. Eq. 36, 57 Am. Dec. 365. This lack of uniformity in the decisions on this important question is thus accounted for in an opinion from which we have already quoted, and shall quote again: "An examination of the cases seems to me to show that some confusion has arisen in the minds of the profession from the circumstance that a rule different from what I have just stated prevailed for many years, and possibly still prevails, in England. There, by a long line of decisions, it was held, for many years, at least, that where a settlement of real estate was made, which was fraudulent under St. 13 Eliz., as to a then existing creditor, and

§ 894. Except in Certain Suits, Where a Trust or Quasi-Trust Exists for all Creditors.—It is not to be understood, however, that it is possible, in every variety of creditors' suits, for the plaintiff to prosecute the suit for his exclusive benefit. The subject is well elucidated in a recent opinion delivered in the court of chancery of New Jersey, by Pitney, V. C.:¹⁴² "That class of creditors' bills in which the suit can properly be said to be necessarily brought for the benefit of other creditors besides the complainant are those which seek to reach, establish, and administer assets in the hands of a trustee, who holds them either voluntarily, or by force of circumstances, involuntarily, for the benefit of all the creditors. They may be classed as follows: First. Suits to administer the estate of a decedent, held by an executor or administrator, and apply the same to the payment of his debts.¹⁴³ Second. Where a living debtor voluntarily assigns property to a trustee for the benefit of his creditors, and a creditor seeks to have that trust administered.¹⁴⁴ Third. Where there is an assignment by operation of law for the equal benefit of creditors, such as occurred in all instances of attachments against foreign or absconding debtors under our statute, until

was set aside, at the suit of that or any other creditor, as fraudulent on that account, the whole proceeds of the sale of such property became at once assets to be divided among all the creditors, both prior and subsequent, and whether judgment creditors or creditors at large, and whether there was any actual fraud or not. The fund once seized by the court, and turned into money, was treated precisely like that of the estate of a decedent or of an insolvent, and distributed among the creditors": Per Pitney, V. C., in *Iauch v. De Socarras*, 56 N. J. Eq. 524, 39 Atl. 381.

¹⁴² *Iauch v. De Socarras*, 56 N. J. Eq. 524, 39 Atl. 381.

¹⁴³ For administration suits, see *Pom. Eq. Jur.*, § 1154. The vice-chancellor mentions, as examples of such suits, *Hazen v. Durling*, 2 N. J. Eq. 133, 137, 138; *Romaine v. Hendrickson's Exrs.*, 24 N. J. Eq. 231; *Coddington v. Bispham*, 36 N. J. Eq. 574.

¹⁴⁴ As to assignments for benefit of creditors, see 3 *Pom. Eq. Jur.*, §§ 993, 994.

the recent change in that respect.¹⁴⁵ Fourth. Cases where a creditor of a corporation seeks to reach unpaid subscriptions of stock.¹⁴⁶ . . . Fifth. A creditor's bill under our chancery act (sections 88-94), in which equitable assets are reached by a receiver, and are all subject to the debts of the defendant, but not distributed *pari passu*, and the complainant is first paid.¹⁴⁷ . . . In all these cases the property reached becomes assets in the hands of the court, to be distributed among the creditors, either equally, or with certain priorities." To the classes thus enumerated should be added other exceptional cases where the creditor is allowed to pursue his remedy in equity without having first reduced his claim to judgment. "The court of chancery does not give any specific lien to a creditor at large, against his debtor, further than he has acquired at law; for, as he did not trust his debtor on the faith of such lien, it would be unjust to give him a preference over other creditors, and thus defeat a *pro rata* distribution, which equity favors, unless prevented by the rules of law."¹⁴⁸

Although all creditors may have the right to share in the proceeds of a suit, it is not essential that the plaintiff should allege in his complaint that the proceedings are for the benefit of all the creditors.¹⁴⁹

¹⁴⁵ See *Hunt v. Field*, 9 N. J. Eq. 36, 57 Am. Dec. 365; *Williams v. Michenor*, 11 N. J. Eq. 520. Here may be classed the actions, common in some states, to have the debtor's fraudulent conveyance declared an assignment for the benefit of all his creditors: See *Baker v. Kinnaird*, 94 Ky. 5, 21 S. W. 237.

¹⁴⁶ "As in *Wetherbee v. Baker*, 35 N. J. Eq. 501. And see *Mallory v. Kirkpatrick*, 54 N. J. Eq. 50, 33 Atl. 205." See the next chapter following.

¹⁴⁷ "As to this class of cases, see *Whitney v. Robbins*, 17 N. J. Eq. 360."

¹⁴⁸ *Day v. Washburn*, 24 How. 355, 16 L. ed. 714; *Talley v. Curtain*, 54 Fed. 43, 8 U. S. App. 347, 4 C. C. A. 177; affirmed, 58 Fed. 4, 7 C. C. A. 1, 8 U. S. App. 424.

¹⁴⁹ *Tatum v. Rosenthal*, 95 Cal. 129, 29 Am. St. Rep. 97, 30 Pac.

§ 895. **When the Lien of the Creditor's Bill Accrues.**—As to property not liable to execution, the plaintiff obtains no lien by the issuing or return of execution. It is the filing of the bill, and service of process after the return of execution, which gives the plaintiff a specific lien.¹⁵⁰ The filing of a creditor's bill and the service of process creates a lien in the nature of an "equitable levy" upon the effects of a judgment debtor, including real property conveyed in fraud of creditors.¹⁵¹ But in order

136, a creditor's action to compel subscribers to the capital stock of an insolvent corporation to pay in the unpaid portion of their subscriptions.

¹⁵⁰ *Beck v. Burdett*, 1 Paige, 305, 19 Am. Dec. 436. See, also, *Davidson v. Burke*, 143 Ill. 139, 36 Am. St. Rep. 367, 32 N. E. 514; *Holbrook v. Ford*, 153 Ill. 633, 46 Am. St. Rep. 917, 39 N. E. 1091, 27 L. R. A. 324 (lien does not begin until service of process); *Boorum & P. Co. v. Armstrong* (Tenn. Ch. App.), 37 S. W. 1095 (by statute, lien dates from filing of the bill); *Bragg v. Gaynor*, 85 Wis. 468, 55 N. W. 919, 21 L. R. A. 161; *Stix v. Chayton*, 55 Ark. 122, 17 S. W. 708; *Ware v. Purdy* (Iowa), 60 N. W. 526; *Newdigate v. Jacobs*, 9 Dana, 18; *Merchants' Nat. Bank v. McDonald*, 63 Neb. 363, 88 N. W. 492, 89 N. W. 770 (lien dates from filing of bill); *Hines v. Duncan*, 79 Ala. 112, 58 Am. Rep. 580. But in *Beith v. Porter*, 119 Mich. 365, 75 Am. St. Rep. 402, 78 N. W. 336, it was held "that no lien arises upon the filing of the bill until the court takes possession or control of the property by virtue of its appointment of a receiver or the issuance of an injunction." In general, as to the time of beginning of *lis pendens* notice, see 2 Pom. Eq. Jur. (3d ed.), § 634, notes 1 and (a).

¹⁵¹ *Miller v. Sherry*, 2 Wall. (69 U. S.) 237, 17 L. ed. 827, citing *Bayard v. Hoffman*, 4 Johns. Ch. 450; *Beck v. Burdett*, 1 Paige, 308, 19 Am. Dec. 436; *Storm v. Waddell*, 2 Johns. Ch. 494; *Corning v. White*, 2 Paige, 567, 22 Am. Dec. 659; *Edgell v. Haywood*, 3 Atk. 352; *Tilford v. Burnham*, 7 Dana, 110. See, also, *Union Nat. Bank v. Lane*, 177 Ill. 171, 69 Am. St. Rep. 216, 52 N. E. 361; affirming *Lane v. Union Nat. Bank*, 75 Ill. App. 299; *King v. Goodwin*, 130 Ill. 102, 17 Am. St. Rep. 277, 22 N. E. 533; *First Nat. Bank v. Gage*, 93 Ill. 172; *Roberts v. Albany etc. R. R. Co.*, 25 Barb. 662; *Snyder v. Smith*, 185 Mass. 58, 69 N. E. 1089; *Hillyer v. Le Roy* (N. Y.), 72 N. E. 237 (accountability of fraudulent transferee for rents and profits dates from the commencement of creditor's suit, not from the time of the fraudulent transfer).

thus to create a *lis pendens*, operating as constructive notice, as to any real estate, the bill must be so definite in the description, that anybody reading it can learn thereby what property is intended to be made the subject of litigation;¹⁵² moreover, the fraudulent grantee must be made a party to the bill in order to charge with constructive notice a purchaser from him of the legal title *pendente lite*.¹⁵³ In respect to chattels, subject to be taken on execution, the rule in some states seems to be that unless the action is brought in aid of an execution, the mere commencement of the action creates no lien as against other creditors, and, if any lien whatever exists, it is so incomplete and imperfect that it is subject to be overreached by a subsequent levy in favor of other creditors, made before the appointment of a receiver. It is the appointment of the receiver in such a case which makes the lien effective and gives the plaintiff priority.¹⁵⁴ Of course the lien acquired by a cred-

¹⁵² *Miller v. Sherry*, 2 Wall. (69 U. S.) 237, 17 L. ed. 827. In Tennessee it is held that in order to create the lien provided for by statute, a bill to reach the creditors' book accounts, choses in action, etc., is insufficient if it describes the property merely in general terms: *Boorum & P. Co. v. Armstrong* (Tenn. Ch. App.), 37 S. W. 1095. In general, see 2 Pom. Eq. Jur. (3d ed.), § 634, notes 7 and (g).

¹⁵³ *Miller v. Sherry*, 2 Wall. (69 U. S.) 237, 17 L. ed. 827.

¹⁵⁴ *First National Bank v. Shuler*, 153 N. Y. 163, 60 Am. St. Rep. 601, 47 N. E. 262, citing *Lansing v. Easton*, 7 Paige, 364; *Becker v. Torrance*, 31 N. Y. 631; *Van Alstyne v. Cook*, 25 N. Y. 489; *Davenport v. Kelly*, 42 N. Y. 193; *Storm v. Waddell*, 2 Sandf. Ch. 494. In *Battery Park Bank v. Western Carolina Bank*, 127 N. C. 432, 37 S. E. 461, the court said: "The lien obtained by the commencement of an action in the nature of a creditors' bill creates a lien upon the choses in action and equitable assets of the debtor, but not upon his tangible personal property. If the latter is levied upon by execution or attachment prior to the appointment of a receiver, at which time the property first passes *in custodia legis*, it passes to the receiver subject to the lien of the levy: *Davenport v. Kelly*, 42 N. Y. 193; *Knower v. Central Nat. Bank*, 124 N. Y. 552, 21 Am. St. Rep. 700, 27 N. E. 247."

itor's bill cannot displace a legal lien acquired before the bill is brought.¹⁵⁵

¹⁵⁵ Thus, a creditor's bill to set aside a fraudulent conveyance does not affect the rights of a creditor who has garnished the property prior to the filing of the bill: *Citizens' Bank of Wichita v. Farwell*, 63 Fed. 117, 11 C. C. A. 108, 27 U. S. App. 268. See, also, *Bradford v. Cooledge*, 103 Ga. 753, 30 S. E. 579.

CHAPTER XLVI.

CREDITORS' BILLS AGAINST STOCKHOLDERS.

ANALYSIS.

- § 896. The "trust-fund" theory.
- § 897. Objections to the theory.
- § 898. The fraud or misrepresentation theory.
- § 899. Suggested modification of the fraud theory.
- § 900. A theory of liability based on analogy to partnership.
- § 901. Public policy theory.
- § 902. Six distinct classes of creditors' bills against stockholders.
- § 903. First class—Money subscription; no call required.
- § 904. Second class—Money subscription; call necessary.
- § 905. Third class—Money subscription; underpaid stock issued as fully paid.
- § 906. Fourth class—Subscription paid in over-valued property.
- § 907. Fifth class—Conveyance of corporate assets in fraud of creditors.
- § 908. Sixth class—Corporation dissolved, directors liquidating as statutory trustees.
- § 909. Questions of pleading and practice in connection with such bills.
- § 910. Statutory liability of stockholders in equity.

§ 896. The "Trust-Fund" Theory.—At law the relation of creditors to the corporation is the ordinary relation of debtor and creditor, and in the absence of statute there is no relation between creditors and stockholders.¹ But in equity, in many cases, judgment creditors are allowed to maintain bills against stockholders in private corporations.

¹ Catlin v. Eagle Bank, 6 Conn. 233; Pond v. Framingham etc. R. R. Co., 130 Mass. 194.

The author is indebted for this chapter to Professor O. K. Murray, of the Department of Jurisprudence, University of California.

The so-called "trust fund" theory attempts to explain the jurisdiction of equity to enforce the liability of stockholders to the extent of the par value of their stock through a trust imposed on the capital stock of the corporation in favor of its creditors. In the words of Justice Story, the inventor of the doctrine, the capital stock is a "pledge or trust fund for the payment of the debts created by the" corporation.² This view, propounded in 1824, seems to have been little questioned, until the first edition of the work of which the present treatise is a supplement.³ Subsequent criticisms of the doctrine by the supreme court of the United States⁴ and by other courts quote with approval the language of this section.⁵ And the best considered of the recent cases represent a complete recession from the earlier view.⁶

² *Wood v. Dummer*, 3 Mason, 308, 311, Fed. Cas. No. 17,944.

³ 3 Pom. Eq. Jur., § 1046; see, also, note (d), in 3d edition.

⁴ *Hollins v. Brierfield Coal etc. Co.*, 150 U. S. 371, 14 Sup. Ct. 127, 37 L. ed. 1113; *McDonald v. Williams*, 174 U. S. 397, 19 Sup. Ct. 743, 43 L. ed. 1022, where the court refused to entertain bill brought to recover dividends paid out of capital.

⁵ *O'Bear Jewelry Co. v. Velfer*, 106 Ala. 205, 54 Am. St. Rep. 31, 17 South. 525, 28 L. R. A. 707; cf. *Parmelee v. Price*, 208 Ill. 544, 70 N. E. 725.

⁶ See the following discussions of the trust-fund theory: 3 Clark & Marshall, *Corporations*, sec. 768; *The Trust-fund Theory and Some Substitutes for It* (E. S. Hunt), 12 Yale L. J. 63 (1902); *The Trust-fund Theory* (by E. A. Harriman), 3 Northwestern Law R. 115, 206; *Recent Development of Corporation Law* (Geo. Wharton Pepper), 34 Am. Law Reg., N. S., 448; *Is Unpaid Capital a Trust Fund in any Proper Sense?* (R. C. McMurtrie), 25 Am. Law Rev. 749; *The Law of the United States Supreme Court as to Capital Stock not Fully Paid* (Thomas Thacher), 25 Am. Law Rev. 940, criticising the doctrine. In defense, besides the standard works of Morawetz, Taylor and Thompson on Corporations, see Articles by Seymour D. Thompson in 27 Am. Law Rev. 846 and in 36 Am. Law Rev. 840; also an article entitled *The Equitable Liability of Stockholders; the Grounds upon Which It Rests* (George B. Barrows), 13 Yale L. J. 66 (1903). See, also, notes in 9 Harv. Law Rev. 481 and 16 Harv. Law Rev. 382 (1903), criticising the doctrine.

§ 897. **Objections to the Theory.**—Aside from the fact that it is impossible to grasp the idea of a trust neither expressly declared, nor raised by the law either as a constructive or resulting trust, it will be found that the theory will not square with the decided cases, nor with the demands of commerce and corporate business. Thus, if the theory were strictly maintained, any creditor of a corporation could maintain a bill to recover assets constituting portions of the capital stock which have been divided among the stockholders or otherwise diverted, but no case has gone to the length of holding that anyone other than a judgment creditor whose legal remedies have been exhausted, or who is prevented by some reason from exhausting his remedies at law, may maintain the bill.⁷ And the mere fact of insolvency on the part of the corporation (the right to pursue legal remedies remaining) will not obviate the necessity of exhausting those remedies.⁸ This view alone, established by the universal trend of authority, shows that the plaintiff maintains his bill in such cases not upon the ground that he has an equitable *right* to enforce, but rather on account of the inadequacy of the legal *remedy*. Other instances where the trust-fund theory fails when brought to bear on the decided cases, may readily be found. For example, the prevailing view is that creditors who become such with notice that the stock has been “watered,” cannot complain as to the over-valuation.⁹ But if there were a trust in any proper

⁷ *Hollins v. Brierfield Coal & I. Co.*, 150 U. S. 371, 14 Sup. Ct. 127, 37 L. ed. 1113; 3 *Clark & Marshall, Corporations*, § 775.

⁸ *Terry v. Anderson*, 95 U. S. 628, 24 L. ed 365; *Case v. Beaugard*, 101 U. S. 690, 25 L. ed. 1004; *National Tube Works v. Ballou*, 146 U. S. 517, 13 Sup. Ct. 165, 36 L. ed. 1070; *Terry v. Tubman*, 92 U. S. 156, 23 L. ed. 537; *Albany & Rensselaer I. & S. Co. v. Southern Agricultural Works*, 76 Ga. 135, 2 Am. St. Rep. 26; 3 *Clark & Marshall, Corporations*, § 775e, p. 2352.

⁹ *Hospes v. Northwestern Mfg. etc. Co.*, 48 Minn. 174, 31 Am. Equitable Remedies, Vol. II—92

sense, the creditor's knowledge would be immaterial; if a trust existed in his favor he could enforce it in the absence of *laches*, or bad faith, or some other defense. If the trust-fund theory be adopted other inconvenient results follow: For example, if a corporation does not hold its property upon the same title by which a natural person holds his property, it would result that it could not dispose of its property absolutely except to a *bona fide* purchaser for value and without notice. Persons, therefore, who had bought goods from a trading company would be liable to have the goods taken from them, if before payment of the price they learned that creditors had claims. And a corporation could not, under any circumstances, prefer a creditor in good faith or give him security, say, for an antecedent indebtedness. Yet some courts which profess to hold to the trust-fund theory allow the same right to corporations to make preferences, that natural persons have.¹⁰ Upon considerations, such as these just enumerated, many courts have been substituting in place of the "trust-fund" theory as a basis for equitable jurisdiction, the "fraud or misrepresentation theory."¹¹

St. Rep. 637, 50 N. W. 1117, 15 L. R. A. 470; Gogebic Ins. Co. v. Iron Chief Mfg. Co., 78 Wis. 427, 23 Am. St. Rep. 417, 47 N. W. 726 (knowledge by creditor that stock has been watered is a defense); Graham v. La Crosse etc. R. R. Co., 102 U. S. 148, 26 L. ed. 106; Coit v. North Carolina Amalgamating Co., 119 U. S. 347, 7 Sup. Ct. 231, 30 L. ed. 420; Handley v. Stutz, 139 U. S. 435, 11 Sup. Ct. 530, 34 L. ed. 706; First Nat. Bk. of Deadwood v. Gustin etc. Min. Co., 42 Minn. 327, 18 Am. St. Rep. 510, 44 N. W. 198, 6 L. R. A. 676; 2 Morawetz, Corporations, §§ 827, 829, 832.

¹⁰ 3 Clark & Marshall, Corporations, § 780a, p. 2366. See the question most elaborately considered in Corey v. Wadsworth, 118 Ala. 488, 25 South. 503, 44 L. R. A. 766; S. C., 99 Ala. 68, 42 Am. St. Rep. 29, 11 South. 350, 23 L. R. A. 618; and in Adams and Westlake Co. v. Deyette, 8 S. D. 137, 59 Am. St. Rep. 746, 65 N. W. 471, 31 L. R. A. 497.

¹¹ Many courts still maintain the trust-fund theory in an extreme form. Thus, in Washington, the courts have consistently carried out

§ 898. **The Fraud or Misrepresentation Theory.**—While this theory received more or less support from the earlier cases—it is even suggested in the case of *Wood v. Dummer*, but the court was struggling there to support a bill stating acts constituting fraud, yet not charging fraud—the opinion which gave definite shape to the theory is that of Mr. Justice Mitchell in the case of *Hospes v. Northwestern Manufacturing Company*.¹² According to this view, the stockholder who pays less than par value for his stock which is issued to him as fully paid, or who pays for his stock in over-valued property, perpetrates a fraud upon those who subsequently deal with the corporation. While this suggestion avoids many of the difficulties raised by the older

the doctrine that capital stock is a trust fund. An attaching creditor of an insolvent corporation, therefore, gets no preference because its assets are a trust fund for the benefit of all the creditors: *Compton v. Schwabacher* (1904), 15 Wash. 306, 46 Pac. 338. See, *contra*, 2 Morawetz, Corporations, § 864, though Mr. Morawetz elsewhere lends his important support to the trust-fund doctrine (2 Morawetz, § 780 et seq., and § 820). In a leading Nevada case the court held that a creditor need not prove a claim against the estate of a deceased stockholder, though the statutes providing for administration required all claims arising on contract to be filed and presented to the administrator, because this claim arose on a trust: *Thompson v. Reno Sav. Bank*, 19 Nev. 103, 3 Am. St. Rep. 797, 7 Pac. 68. The Utah court holds that the trust is an express trust, so that no statute of limitations would run until repudiation and notice to the creditor: *Crofoot v. Thatcher*, 19 Utah, 212, 75 Am. St. Rep. 725, 57 Pac. 171. See, also, *Van Pelt v. Gardiner*, 54 Neb. 701, 75 N. W. 874; *Kilbreath v. Gaylord*, 34 Ohio St. 305. On the other hand, the Oregon court repudiates the doctrine of the Utah case, and holds that the statute begins to run against the creditor as soon as it begins to run against the corporation: *Hawkins v. Donnerberg* (1901), 40 Or. 108, 66 Pac. 691, 908. See, also, the following cases rejecting the trust-fund theory: *Wyman v. Bowman*, 127 Fed. 276, 62 C. C. A. 189; *Killen v. Barnes*, 106 Wis. 546, 82 N. W. 536; *Cameron v. Groveland Imp. Co.*, 72 Am. St. Rep. 52, note; *Merced Bank v. Ivett*, 127 Cal. 136, 59 Pac. 393.

¹² *Hospes v. Northwestern Mfg. Co.*, 48 Minn. 174, 31 Am. St. Rep. 637, 50 N. W. 1117, 15 L. R. A. 470.

theory, it raises others. As, for example, why, if in fact the shareholder makes a misrepresentation which causes damage to the creditor, should not an action at law lie as well as a bill in equity? But no such action has ever been successfully maintained. Again, suppose that the creditor's claim arises not from any representation,—suppose, for example, that the demand was originally for personal injuries sustained by the plaintiff by reason of the corporation's negligence,—it is plain that the theory breaks down.¹³ And it is also apparent that this view will not explain the right of a judgment creditor to call in unpaid subscriptions—professedly, it applies only in cases where arrangements have been made between the corporation and the stockholders relieving the stockholders from the ordinary effects of a contract of subscription. Again, why is the transferee of stock ever liable on this theory—especially, a transferee who takes the stock after the plaintiff became a creditor? And lastly, in the matter of parties, why, under the “fraud” theory is it necessary to make the corporation a defendant to the bill? Yet it is perfectly settled that the corporation is a necessary party to the bill, and that the equitable remedy is enforced *through* the corporation.¹⁴

§ 899. **Suggested Modification of the Fraud Theory.**—The last objection might, it is true, be avoided by treating the representations as having been made by the corporation for its stockholders. In this view, the liability is contractual, so that as was held in *Curran v. Arkansas*,¹⁵

¹³ *Kelley v. Clark*, 21 Mont. 291, 69 Am. St. Rep. 668, 53 Pac. 959, 42 L. R. A. 621; *Cole v. Millerton I. Co.*, 133 N. Y. 164, 28 Am. St. Rep. 615, 30 N. E. 847; *National etc. Co. v. Story etc. Co.*, 111 Cal. 531, 539, 44 Pac. 157; 2 *Morawetz, Corporations*, § 828.

¹⁴ *Wetherbee v. Baker*, 35 N. J. Eq. 501; *Potter v. Dear*, 95 Cal. 578, 30 Pac. 777; *Welch v. Sargent*, 127 Cal. 72, 82, 59 Pac. 319.

¹⁵ 15 How. 304, 14 L. ed. 705.

the repeal of the liability of the stockholders would be a law impairing the obligation of the contract between the creditor and the corporation. If the liability of the stockholder rested wholly in tort, this result could not follow. But it must be confessed that, even with this modification, the representation theory is not wholly consistent with the decisions in the particulars pointed out in the last section.

§ 900. **A Theory of Liability Based on Analogy to Partnership.**—A theory to support the liability of stockholders in equity has been propounded by some authorities as follows: At common law, the liability of incorporators is that of partners. The charter enables them by statute to escape this liability by paying for the stock of the company in money or money's worth. "Entire immunity from individual liability is not invariably incidental to the grant of a charter or articles of corporate existence. If the legal conditions are complied with by the organizers of the corporation, the immunity follows as a matter of law; but if they are not, an individual liability of the shareholders arises, imposed by the same power which granted the right of corporate existence and whereby creditors may make their claims good."¹⁶ The difficulty with this view is that it establishes too much. It might be questioned whether there is any common-law liability imposed on corporators. Aside from this, however, the doctrine leads to the inevitable conclusion that the liability should be enforced at law, not in equity. The stockholder, on this view, would plead in confession and avoidance the due

¹⁶ Hunt, J., in *Kelly v. Clark*, 21 Mont. 291, 321, 69 Am. St. Rep. 668, 53 Pac. 959, 42 L. R. A. 621. See, also, note to *Van Cleve v. Berkey*, 42 L. R. A. 622, by H. P. Farnham, and a note by the editor of the *American Law Review* (Seymour D. Thompson), 32 *Am. Law Rev.* 291.

payment of his subscription, amounting to a discharge of his liability.

§ 901. **Public Policy Theory.**—It has been said that the liability of stockholders to the creditors of the corporation is based on no consistent theory, but is simply “a more or less systematic judicial recognition of a demand of the commercial world. That demand is, in substance, that the liability of a stockholder shall be unlimited up to the par value of his shares and that he shall not be entitled to the benefit of any legal principle which would normally entitle him to an advantage against corporate creditors. This is not a legal theory. It is a commercial condition struggling for recognition in the courts.”¹⁷ And Mr. Justice Temple, in a California case, says: “The corporation is supposed to have sought credit based upon its supposed capital. . . . Public policy requires that the fact whether a particular creditor did trust the corporation on that basis should not be inquired into.”¹⁸ Adopting the same view of the origin of the liability, a recent writer declares that the jurisdiction of courts of equity in such suits is based on no principle whatever and should be abandoned.¹⁹

§ 902. **Six Distinct Classes of Creditors' Bills Against Stockholders.**—The truth seems to be that all of the cases cannot be explained on any single principle, and the reason they cannot be so explained is, it is suggested, because several distinct things have usually been

¹⁷ Geo. Wharton Pepper in 34 Am. Law Reg., N. S., 456.

¹⁸ Vermont Marble Co. v. De Clez Granite Co., 135 Cal. 579, 584, 87 Am. St. Rep. 143, 67 Pac. 1057, 56 L. R. A. 728.

¹⁹ E. S. Hunt in 12 Yale L. J. 74. See, also, Christensen v. Eno, 106 N. Y. 97, 60 Am. Rep. 429, 12 N. E. 648; Van Cott v. Van Brunt, 82 N. Y. 535.

treated under one title. In fact, there would seem to be several distinct classes of cases where stockholders are held liable in equity at the suit of creditors, governable by different principles. The cases may be classified thus: (1) The stockholder may have subscribed for stock to be paid for in money, and, by the terms of his subscription, no call has to be made to render him liable, or the call has already been made. (2) Under the same contract of subscription, a call has to be made before the stockholder will be liable to pay. (3) The corporation has agreed that the stock issued to the stockholder for money, at less than par, shall be considered as fully paid. (4) The corporation has issued its stock as fully paid for property conveyed to it in lieu of money, (a) such property being grossly over-valued by the corporation,²⁰ or (b) being materially over-valued, but the corporation acting in good faith and in the exercise of its best judgment, or (c) the property being materially over-valued, and the corporation not acting in good faith, or (d) the difference between the valuation assigned and the true value being immaterial. This class of cases sometimes involves statutory and constitutional provisions against "watered" stock, giving rise to further distinctions. (5) A fifth class of cases, often treated under the "trust-fund" doctrine, to the obscuration of the subject, is that where the corporation has conveyed the assets representing its capital to stockholders or others in fraud of creditors. (6) Lastly, in certain cases, the corporation having been dissolved, the directors or trustees in liquidation have had the duties of trustees imposed on them by statute. The case of *Wood v. Dummer* on which the trust-fund doctrine was based was really a case of this kind.

²⁰ The cases regard the bad faith of the directors, rather than that of the stockholder, indicating that the "misrepresentation" theory should be modified as stated in the text.

§ 903. Cases of the First Class—Money Subscription; No Call Required.—In the first class of cases, under modern systems of procedure, the debt from the stockholder to the corporation, being a legal debt, is garnishable.²¹ But though statutes have adopted equitable remedies in ordinary legal proceedings, it is usually held that the jurisdiction of equity is not, by reason of such extension of equitable doctrines and practice to actions at law, abridged or destroyed. Generally, it is held that where statutes permit garnishments in actions at law, the remedy by judgment creditor's bill is unaffected.²² At least one court, however, adopts the view that, in cases of this class, garnishment is the sole remedy.²³ In those states which allow a judgment creditor's bill to be maintained for the purpose of reaching choses in action of the debtor, the bills of the first class are plainly based upon the ground that the debt is a chose in action which, from its nature, was not the subject of execution at common law. In other words, the jurisdiction, in this class of cases, is based on the inadequacy of legal remedies.²⁴

§ 904. Cases of the Second Class—Money Subscription; Call Necessary.—Where the formality of a call is necessary to create a legal obligation on the stockholder, the court of equity will entertain the bill upon the ground

²¹ 3 Clark & Marshall, Corporations, sec. 798b; 2 Michigan L. Rev. 271.

²² Baines v. Babcock, 95 Cal. 581, 29 Am. St. Rep. 158, 27 Pac. 674, 30 Pac. 776; Harmon v. Page, 62 Cal. 448.

²³ 3 Clark & Marshall, Corporations, § 798, e (2); Henderson v. Hall, 134 Ala. 455, 32 South. 840; Enslen v. Nathan, 136 Ala. 412, 34 South. 929.

²⁴ The doctrine of Hadden v. Spader, 20 Johns. 554, has not been adopted in all the American states, e. g., in Alabama (O'Bear Jewelry Co. v. Volfer, 106 Ala. 205, 54 Am. St. Rep. 31, 17 South. 525, 28 L. R. A. 707). See *ante*, § 877. In these states, therefore, no such bill should be entertained.

that the debt of the stockholder is an equitable asset of the corporation,—that the directors have omitted to perform a formality which they should have performed, and equity, regarding that as done which should have been done, will treat the call as having been made, and proceed as in the first class of cases; or (though there would seem to be theoretical difficulties in the practice), will order a call to be made by its receiver, and the fund to be collected by him in actions at law.²⁵ The proceeding by a judgment creditor to collect unpaid subscriptions has been called an “equitable garnishment.”²⁶

§ 905. Cases of the Third Class—Money Subscription; Underpaid Stock Issued as Fully Paid.—In this class of cases we approach a new principle. The stockholder has paid less than par for the stock, but the corporation has agreed that the stock shall be considered as fully paid. The release is binding as between the corporation and the stockholder.²⁷ And the creditor also is bound by the agreement until it is set aside. However, he may have it set aside as in effect a fraud upon him.²⁸

§ 906. Cases of the Fourth Class—Subscription Paid in Over-valued Property.—(a) Where the property for which stock has been issued is taken by the corporation at a gross over-valuation, or where the stock is issued

²⁵ The court, in the *Glenn* cases and in the *Upton* cases, made a call and authorized its receiver to begin actions at law based on these calls. (See the *Glenn* cases enumerated in argument of *Hawkins v. Glenn*, 131 U. S. 319, 9 Sup. Ct. 739, 33 L. ed. 184, and the *Upton* cases in 3 *Clark & Marshall, Corporations*, p. 2469.)

²⁶ *Hatch v. Dana*, 101 U. S. 205, 25 L. ed. 885.

²⁷ *Coffin v. Ransdell*, 110 Ind. 417, 11 N. E. 20; *Helliwell on Stock and Stockholders*, § 419, p. 802 (1903).

²⁸ *Bickley v. Schlag*, 46 N. J. Eq. 533, 20 Atl. 250; *Bruner v. Brown*, 139 Ind. 600, 38 N. E. 318.

as a "bonus" without any consideration, the case is like the third class of cases just mentioned. The fraud may be inferred as a matter of law, and hence need not be alleged.²⁹ The relief is somewhat peculiar, for equity does not demand the restoration of the property conveyed, but charges the stockholder with the difference between the value of the property conveyed and the par value of the stock. (b) and (c) In these cases, the bill should not only show the material over-valuation, but should affirmatively charge fraud.³⁰ The inference of fraud that might arise from the proofs that the property was over-valued, would, in any event, be rebuttable by proof that the officers of the corporation acted in good faith and in the exercise of their best judgment, though it must be admitted that there are cases which disregard these elements. In determining the question whether or not the officers of the corporation did act in good faith, the character of the property

²⁹ *Hastings Malting Co. v. Iron Range Brewing etc. Co.*, 65 Minn. 28, 67 N. W. 652; *Coleman v. Howe*, 154 Ill. 458, 45 Am. St. Rep. 133, 39 N. E. 725; *Lester v. Bemis Lumber Co.*, 71 Ark. 379, 74 S. W. 518.

³⁰ *Bank v. Alden*, 129 U. S. 372, 9 Sup. Ct. 332, 32 L. ed. 725; *Turner v. Bailey*, 12 Wash. 634, 42 Pac. 115; *Bickley v. Schlag*, 46 N. J. Eq. 533, 20 Atl. 250; *Bruner v. Brown*, 139 Ind. 600, 38 N. E. 318; *Northwestern Mutual Life Ins. Co. v. Cotton Exchange R. E. Co.*, 70 Fed. 155; *Taylor v. Walker*, 117 Fed. 737, and note to said case in 17 Am. & Eng. Corp. Cas. 326. But see *Kelley v. Clark*, 21 Mont. 291, 69 Am. St. Rep. 668, 53 Pac. 959, 42 L. R. A. 621; *Vermont Marble Co. v. Dealey Granite Co.*, 135 Cal. 574, 87 Am. St. Rep. 143, 67 Pac. 1057; *Easton Nat. Bank v. Am. Brick & Tile Co.* (N. J. Ch. 1905), 60 Atl. 54. The presumption, of course, in the absence of evidence or allegation is that the value was adequate: *American Tube & Iron Co. v. Hayes*, 165 Pa. St. 489, 30 Atl. 936; *Davis v. Montgomery Furnace etc. Co.* (Ala.), 8 South. 496. See, also, *Taylor v. Cummings*, 127 Fed. 108, 62 C. C. A. 108; *Wyman v. Bowman*, 127 Fed. 257, 62 C. C. A. 189; *Merrill v. Prescott*, 67 Kan. 767, 74 Pac. 259; *Flour City Nat. Bank v. Shire* (N. Y.), 72 N. E. 1141; *Cunningham v. Halley etc. Co.*, 121 Fed. 720, 58 C. C. A. 140; *Macbeth v. Banfield* (Or.), 78 Pac. 693.

is, of course, an important element. If the stock was issued to a stockholder in return for an untried patent or an undeveloped mining location, for example, the directors would have greater discretion in the matter of fixing values than if the stock were issued in return for the conveyance to the corporation of improved real estate or of an established business.³¹ (d) If the difference in value is inconsiderable, equity will not interfere with the arrangement into which the corporation and the stockholder have entered.

Authority may be found denying relief under this fourth class (which is the most frequent in practice), proceeding upon the ground that the stock is not property until issued and has no value, and therefore, in the absence of statute, it may be given away, without giving cause to the creditors to complain. But this view overlooks a fundamental proposition—namely, that in addition to the charter, a corporation is made up of a series of contracts of subscription.³² Of course, in all cases, the question is as to the value as it appeared to the directors when the property was taken.³³

§ 907. Cases of the Fifth Class—Conveyance of Corporate Assets in Fraud of Creditors.—This is the ordinary case of fraudulent conveyances of property by a failing debtor, and the bill rests upon the two elements of fraud and inadequacy of legal remedies.³⁴

§ 908. Cases of the Sixth Class—Corporation Dissolved; Directors Liquidating as Statutory Trustees.—In this class of

³¹ Frost on Incorporation, pp. 122-130, §§ 105, 106. But see *Van Cleve v. Berkey*, 143 Mo. 109, 44 S. W. 743, 42 L. R. A. 593; cf., *Iron Co. v. Hayes*, 165 Pa. St. 489, 30 Atl. 936.

³² *Christensen v. Eno*, 106 N. Y. 97, 60 Am. Rep. 429, 12 N. E. 648.

³³ *Clark v. Bever*, 139 U. S. 96, 11 Sup. Ct. 468, 35 L. ed. 88; *Handley v. Stutz*, 139 U. S. 417, 11 Sup. Ct. 530, 35 L. ed. 227.

³⁴ 3 *Clark & Marshall, Corporations*, p. 2354, § 777.

cases, where proceedings are brought by creditors for the purpose of winding up a corporation, or administering the estate of a dissolved corporation, we approach the case of a real trust. Upon dissolution the corporation ceases to exist—at common law, for all purposes, so that its debts were extinguished. Equity, however, required the trustees in liquidation to pay the claims of creditors before paying those of the stockholders,—the nominal beneficiaries.³⁵ It will be noted that in the ordinary administration proceeding the jurisdiction of the court depends upon a trust existing in favor of the stockholders, but equity having obtained control of the fund administers it upon equitable principles. Even in this case, therefore, in the absence of statute, there is no trust in favor of creditors—though statutes, at the present day, very often give creditors the right to file bills for a winding up of the affairs of the corporation.³⁶

§ 909. **Questions of Pleading and Practice in Connection with Such Bills.**—The allegations of the bill, questions of parties and other matters of practice arising in connection with bills by creditors may be determined by considering under which class the bill should be placed. Though there has been some confusion as to whether all of the stockholders are necessary parties to the bill or whether it is sufficient to proceed against a single stockholder, it would seem plain that only in the last class of cases is it necessary to make all the stockholders parties.³⁷ Other stockhold-

³⁵ 3 Clark & Marshall, Corporations, p. 2393, § 783.

³⁶ Worthen v. Griffith, 59 Ark. 577, 43 Am. St. Rep. 58, 28 S. W. 286 (corporate assets a trust fund only from time that court of equity takes possession); Wilkinson v. Bertock etc. Co., 111 Ga. 187, 36 S. E. 623; Jacobs v. Mexican Sugar Co., 130 Fed. 589.

³⁷ Brundage v. Monumental G. & S. M. Co., 12 Or. 322, 7 Pac. 314; Lumpkin, P. J., in Wilkinson v. Bertock etc. Co., 111 Ga. 187, 195, 36

ers may, if the defendant thinks their presence necessary for his protection, be brought in by a cross-bill, but it is not indispensable that such cross-bill be filed. The bill should be filed for the benefit of all creditors who desire to become parties; but even though not expressly filed for the benefit of such other creditors, any creditor may nevertheless establish his claim in the suit.³⁸ If the action is brought to set aside fraudulent conveyances made to the stockholders, only those participating in the fraud or benefiting thereby should be joined. As the equitable remedy is enforced through the corporation, it is, of course, necessary, where the case is under any of the first five classes, to make the corporation a defendant.³⁹ The plaintiff should allege a judgment and the return of execution unsatisfied in all cases where it is possible to pursue such remedies⁴⁰—in those cases which are equitable garnishments, for the sole purpose of showing the exhaustion of legal remedies, in the cases based on fraud, to show the damage as well as the inadequacy of the legal relief. A judgment rendered in a sister state is not a sufficient exhaustion of legal remedies, upon which to base a bill

S. E. 623; *Singer v. Hutchinson*, 183 Ill. 606, 75 Am. St. Rep. 133, 56 N. E. 388 (the creditor dismissed the bill as to certain stockholders and proceeded only as to remainder); *Cooper v. Adel Security Co.*, 127 N. C. 219, 37 S. E. 216; *Welch v. Sargent*, 127 Cal. 72, 59 Pac. 319; *Baines v. Babcock*, 95 Cal. 581, 29 Am. St. Rep. 158, 29 Pac. 674, 30 Pac. 776; 2 *Morawetz, Corporations*, § 863, note 1; *Crawford v. Rohrer*, 59 Md. 599; *Hatch v. Dana*, 101 U. S. 205, 25 L. ed. 885.

³⁸ *Turnbull v. Prentiss Lumber Co.*, 8 Am. & Eng. Corp. Cas. 257 (Mich., 1884); *Braun's Appeal*, 105 Pa. St. 414, 3 Am. & Eng. Corp. Cas. 1. But only judgment creditors can join as parties: *Baines v. West Coast L. Co.*, 104 Cal. 1, 37 Pac. 767; cf. *Handley v. Stutz*, 137 U. S. 706, 11 Sup. Ct. 117, 34 L. ed. 706.

³⁹ *Wetherbee v. Baker*, 35 N. J. Eq. 501; *Potter v. Dear*, 95 Cal. 578, 30 Pac. 777.

⁴⁰ *Case v. Beauregard*, 101 U. S. 690, 25 L. ed. 1004.

in equity, though in the *Glenn* cases, before referred to, the decree of the court of equity in Virginia making the call was held sufficient to warrant the receiver in bringing actions at law in other jurisdictions.⁴¹ The judgment against the corporation is conclusive against the stockholder, and the merits of the creditor's original claim cannot be relitigated.⁴² If the bill shows that the creditor had notice of the fraudulent arrangements between the stockholders and the corporation, as stated under the discussion of cases of the fourth class *supra*, it is demurrable; but on principle, it would seem that, in cases under the first and second classes the question of notice should be immaterial, and no cases have been noted where knowledge or notice has affected the creditor's right to file a bill to collect unpaid subscriptions. If, for example, the court of equity orders a call, the fund produced as a result thereof should inure equally to the benefit of all creditors; and so of property which has been fraudulently conveyed and is recovered,—it should inure to the benefit of future as well as existing creditors.⁴³ So as regards the stockholders who are to be made parties defendant in such bills. If the stock is unpaid and is not represented to be paid up, any transferee of the stock is liable, and, if the original stockholder has transferred the stock while the corpora-

⁴¹ *National Tube Works v. Ballou*, 146 U. S. 517, 13 Sup. Ct. 165, 36 L. ed. 1070; *Rule v. Omega Stove etc. Co.*, 64 Minn. 326, 67 N. W. 60; *Barber v. International Co. of Mexico*, 73 Conn. 587, 48 Atl. 758; *Glenn v. Williams*, 60 Md. 93. See, also, *Sanger v. Upton*, 91 U. S. 56, 23 L. ed. 220, and the other *Upton* cases cited, 3 Clark & Marshall, Corporations, p. 2469.

⁴² *Marsh v. Burroughs*, 1 Wood, 463, Fed. Cas. No. 9112; *Baines v. Babcock*, 95 Cal. 581, 29 Am. St. Rep. 158, 27 Pac. 674, 30 Pac. 776 (stockholder cannot show that debt was *ultra vires*); *Thompson v. Reno Bank of Savings*, 19 Nev. 103, 3 Am. St. Rep. 797, 7 Pac. 68; *Wetherbee v. Baker*, 35 N. J. Eq. 501, 507; *Singer v. Hutchinson*, 183 Ill. 606, 75 Am. St. Rep. 133, 56 N. E. 388.

⁴³ 2 Morawetz, Corporations, §§ 827, 832.

tion is solvent and without any intent to escape liability, he is released from liability. But where the equitable jurisdiction is based on fraud, it is apparent that the participants in the fraud cannot be released by any transfer of their stock, and on the other hand, that the transferee will not be liable if he be a *bona fide* purchaser of the stock for value and without notice.⁴⁴ In truth, there is a theoretical difficulty in holding any transferee of the stock on the ground of fraud.⁴⁵

Of course, when the court, under whatever head of equity, acquires jurisdiction of the parties and of the subject-matter, it will apply equitable principles to the administration of the fund that comes under its control. Accordingly, it will not permit a stockholder to plead, as a set-off against the creditor's claim, a debt owing by the corporation to the stockholder.⁴⁶ But it is not necessary to invoke the trust-fund theory to support this doctrine, which is simply the application of the principles of chancery practice to a matter already in the court's jurisdiction.

The plea of the statute of limitations will also be governed by the nature of the bill. If the assets were legal,—an unpaid subscription, after a call was made,—

⁴⁴ 2 Clark & Marshall, Corporations, p. 1266, § 401; 2 Morawetz, Corporations, § 858; Garden City Sand Co. v. Am. Refuse Crematory Co., 205 Ill. 42, 68 N. E. 724; People's Home Savings Bank v. Rickard, 139 Cal. 285, 73 Pac. 858; Allen v. Grant (Ga.), 50 S. E. 494; Easton Nat. Bk. v. Am. B. & T. Co. (N. J. 1905), 60 Atl. 54. Liability is not avoided because the stock has always stood in the name of a mere "dummy": American Alkali Co. v. Kurtz (1905), 134 Fed. 663.

⁴⁵ 16 Harv. Law Rev. 382 (1903).

⁴⁶ Colorado T. & I. Co. v. Sedalia Smelting Co., 13 Colo. App. 474, 59 Pac. 222; Sawyer v. Hoag, 17 Wall. 610, 21 L. ed. 731; Gilchrist v. Helena etc. Co., 49 Fed. 519; Mathis v. Pridham, 1 Tex. Civ. App. 58, 20 S. W. 1015; Boulton Carbon Co. v. Mills, 78 Iowa, 460, 43 N. W. 290, 5 L. R. A. 649; 3 Clark & Marshall, Corporations, § 801; 2 Morawetz, Corporations, § 862; Worthen v. Griffith, 59 Ark. 562 43 Am. St. Rep. 50, 28 S. W. 286.

the creditor should be barred when the corporation is barred. Where a call is necessary, no statute should run until the call is made (or what is the same thing, until equity disregards the formality of the call and makes the proper order). In cases of fraudulent conveyances the statute should run against the creditor from the time he has notice; in cases of arrangements whereby the stockholder has been released by the corporation, binding the corporation though voidable at the instance of creditors, the right of action would seem not to arise until the creditor exhausts his legal remedies.⁴⁷ The decree in all cases will be framed on equitable principles; the court may or may not require the whole balance to be paid, according as it is necessary or not; and all creditors who choose to come in and prove their debts must be protected by the decree.⁴⁸

§ 910. *Statutory Liability of Stockholders in Equity.*—Statutes imposing an individual liability upon shareholders in a corporation are usually held, on familiar principles, not to oust the equitable jurisdiction, unless the statutes expressly require such interpretation.⁴⁹ Some of these statutes impose a liability enforceable in courts of law. But where the statute provides in general terms for a proportionate liability on the part of stockholders for the debts of the corporation, it is usually held that the remedy for enforcement lies with the court of equity.⁵⁰ In such cases it is plain that the

⁴⁷ 3 Clark & Marshall, Corporations, p. 2473 et seq., § 802; *Scovill v. Thayer*, 105 U. S. 143, 26 L. ed. 968. See, also, note in 96 Am. St. Rep. 972; *Bennett v. Thorne* (Wash.), 78 Pac. 936.

⁴⁸ *Morgan v. N. Y. etc. R. R.*, 10 Paige, 290; *Thompson v. Reno Savings Bk.*, 19 Nev. 103, 3 Am. St. Rep. 797, 7 Pac. 68.

⁴⁹ *Harmon v. Page*, 62 Cal. 448.

⁵⁰ *Pollard v. Bailey*, 20 Wall. 520; *Terry v. Little*, 101 U. S. 216, 25 L. ed. 864; *Patterson v. Lynde*, 106 U. S. 519, 1 Sup. Ct. 432, 27 L. ed. 265.

machinery of a court of law is unsuited to determine the proportion. It is necessary to have the corporation and all the stockholders parties to the suit, in order to ascertain what the amount of the deficiency is and how much has to be contributed by each stockholder. Of course, if the proportionate liability is unlimited by the par value of the stock, no such necessity of a resort to equity exists. The bill in equity to enforce such statutory liability should be framed so as to enable all creditors who desire to do so to come in, and by sharing in the expenses of the suit, to participate in the fund.⁵¹ The chief difference between the equitable liability and the statutory liability in equity is, that in the former the shareholder's debt is sought to be collected, in the latter, the corporation's debt for which he is made liable by the statute.⁵² It therefore happens that the judgment against the corporation, which is always conclusive against the stockholders in the equitable suit, may not be conclusive on the merits of the claim in the statutory suit.

⁵¹ 2 Morawetz, § 902; *Smith v. Huckabee*, 53 Ala. 191 (there can be but one suit). It must be for the benefit of all the creditors, against all of the stockholders: *Clark v. Knowles* (1904), 187 Mass. 35, 105 Am. St. Rep. 376, 72 N. E. 352; *Miller v. Smith* (R. I. 1904), 58 Atl. 634, 66 L. R. A. 473.

⁵² Lumpkin, P. J., in *Wilkinson v. Bertock etc. Co.*, 111 Ga. 187, 195, 36 S. E. 623; *Welch v. Sargent*, 127 Cal. 72, 82, 59 Pac. 319; *Patterson v. Lynde*, 106 U. S. 520, 1 Sup. Ct. 432, 27 L. ed. 265. See, also, *Patterson v. Lynde*, 112 Ill. 196; *Hickling v. Wilson*, 104 Ill. 54; *Palmer v. Woods*, 149 Ill. 146, 155, 35 N. E. 1122; 2 *Columbia L. Rev.* 338; 39 *Am. Law Reg.*, N. S., 586.

Equitable Remedies, Vol. II—93

CHAPTER XLVII.

SUITS FOR REIMBURSEMENT, CONTRIBUTION, EXONERATION, AND SUBROGATION.

ANALYSIS.

- § 911. In general.
- §§ 912-914. Reimbursement.
 - § 912. Parties entitled thereto.
 - § 913. Conditions of recovery.
 - § 914. Amount of recovery—Incidents of right.
- §§ 915-918. Contribution.
 - § 915. Statement of doctrine—Jurisdiction in equity.
 - § 916. Parties entitled to contribution.
 - § 917. Conditions under which equitable action is maintainable.
 - § 918. Amount of recovery—Incidents of the right.
 - § 919. Exoneration.
- §§ 920-925. Subrogation.
 - § 921. Parties entitled to subrogation.
 - § 922. Nature of the right, purely equitable.
 - § 923. Conditions upon which subrogation is allowed—Payment—Other security.
 - § 924. Rights upon which subrogation operates.
 - § 925. Subrogation of creditor or co-surety to securities given to indemnify a surety.

§ 911. In General.—Under the early jurisdiction at law, in the absence of express contracts for indemnity or exoneration, it was left to the caprice of the creditor to determine upon which of several parties bound for the same obligation the burden should fall, the loss being left wherever the creditor, by his choice of a defendant, might put it. This inadequacy of remedy on the part of the victim, and consequent failure of justice, became, however, a ground for the interposition of equity, and the proper readjustment of such burdens was, at an early day, an important field of equitable jurisdiction. The efforts of courts of equity have been

directed toward placing the loss, as far as possible, on the parties ultimately liable,—or as between two or more not ultimately liable, on the party whose liability is prior—and, as between parties equally liable, toward distributing the loss equally among them. The former result is reached by an action for reimbursement, and the latter by an action for contribution. Both of these results are assisted by the action for exoneration, and the remedial process of subrogation.¹

§ 912. Reimbursement—Parties Entitled Thereto.—When a party only subsequently liable for an obligation, performs any part of it, he is entitled in equity² to be reimbursed or indemnified to the amount of his loss, by any other party to the obligation whose liability is

¹ Suits by a surety against the principal debtor are ordinarily grouped together under the head of “exoneration,” whether the suit be before or after payment: Pom. Eq. Jur., § 1417. An action by a surety to reimburse himself for money expended, however, often falls very far short of a complete exoneration, using the word in an accurate sense, for the temporary withdrawal of the surety's funds may have wrecked his business and done other damage for which he has no redress: See *Powell v. Smith*, 8 Johns. 249; *Hayden v. Cabot*, 17 Mass. 169. Moreover, there is a substantial difference between a suit for reimbursement merely, and a suit brought by the surety before payment, for what is truly exoneration, the latter being exclusively equitable. To avoid confusion, therefore, some different nomenclature seems of advantage, and actions for exoneration strictly, whether by a surety, for exoneration from his principal's debt, or by a co-surety, for exoneration from liability for the share of his co-surety, are treated under a distinct heading.

The author is indebted for this chapter to Mr. F. G. Dorety, lately instructor in the Department of Jurisprudence, University of California.

² While an action of *assumpsit* for the purpose is now everywhere entertained, and ordinarily employed, the equitable jurisdiction still remains: *Wesley Church v. Moore*, 10 Pa. St. 273; *Baxter v. Moore*, 5 Leigh, 219; *Butler v. Butler's Admr.*, 8 W. Va. 677. There is ordinarily no advantage in the equitable action, however, unless in cases involving complication of parties: *Mountjoy v. Bank's Exrs.*, 6 Munf. (Va.) 387. See, however, § 919, *post*.

prior to his own.³ This right is given not only to the strict surety and to one who mortgages property

³ The question of priority and subsequence of liability among parties to the same obligation is the same in cases of indemnity, contribution, exoneration, and subrogation, and consequently may be treated of here, once for all. Who is the principal debtor, or party primarily liable, is ordinarily determined from the agreement, express or implied, or the understanding of the parties. The party receiving the benefit of the transaction will, in the absence of other evidence, be considered the principal. In cases involving both tort and contract liability, as where an insurance policy calls upon a company to pay for a loss caused by the negligence of another, the party whose liability arises *ex delicto* is primarily liable: See § 921, note 72, *post*. As between two parties liable in tort, one of whom may be nevertheless entitled to contribution or reimbursement from the other, as in the case of a wrongful suit, brought by one party for the benefit of another, the party receiving the benefit, and at whose request the action was brought, is the principal debtor: *Culmer v. Wilson*, 13 Utah, 129, 57 Am. St. Rep. 713, 44 Pac. 833. And the liability of a party assisting in the default of the principal is prior to that of a surety on the principal's bond: See § 923, note 69, *post*. In the absence of some reason to the contrary, all parties secondarily liable on the same obligation are liable in the same degree, even though bound by different instruments, executed at different times, and unknown to each other: See *Deering v. Earl of Winchelsea*, 2 Bos. & P. 270, 1 Cox, 318; *Thompson v. Dekum*, 32 Or. 506, 52 Pac. 517, 755; *Kellar v. Williams*, 10 Bush (Ky.), 216; *Bosley v. Taylor*, 5 Dana (Ky.), 157, 30 Am. Dec. 677; *Norton v. Coons*, 3 Denio, 130; *Armitage v. Pulver*, 37 N. Y. 494. But this arrangement may be altered by an agreement between two or more of the secondary parties, by which, as between themselves, the liability of one becomes prior and that of the other subsequent. An agreement by one to exonerate another, or to hold him harmless, has this effect: *Hayden v. Thrasher*, 18 Fla. 795. Or the surety last becoming bound may stipulate that his liability shall be subsequent to that of a prior surety, and this stipulation will be given effect: *Harrison v. Lane*, 5 Leigh (Va.), 414, 27 Am. Dec. 607; *Harris v. Warner*, 13 Wend. (N. Y.) 400. Where one surety consents to be substituted for another, as where, by order of court, one set of sureties on a fidelity bond is replaced by another, the former still remaining bound, the liability of the new sureties is considered prior to that of the old: *Glenn v. Wallace*, 4 Strob. Eq. (S. C.) 149, 53 Am. Dec. 657; *Bobo v. Vaiden*, 20 S. C. 271; *Morris v. Morris*, 9 Heisk. (Tenn.) 814. It has been held that the liability of a surety signing at the request of another is subsequent to that of the latter: *Byers v. McClanahan*,

to secure the debt of another,⁴ but to a guarantor,⁵ a sub-surety, suing the principal debtor,⁶ or a party not a strict surety, but merely secondarily liable for the debt, even *ex delicto*, in certain cases.⁷ And a party appearing on the face of the obligation as principal may prove himself a surety by parol.⁸ It is held in many cases, however, that the obligation must have been incurred at the request of the principal debtor.⁹ A mere stranger or volunteer paying the debt of another with-

6 Gill & J. (Md.) 250; Burnett v. Millsaps, 59 Miss. 333; *contra*, Bishop v. Smith (N. J.), 57 Atl. 874. A surety, later in point of time, who, by his interposition, has prevented immediate satisfaction of the creditor's demand against the principal debtor, as in the case of a surety on a bail bond or an appeal bond, is subject to a liability prior to that of a surety on the original obligation: Opp v. Ward et al., 125 Ind. 241, 21 Am. St. Rep. 220, 24 N. E. 974; March v. Barnet, 121 Cal. 419, 66 Am. St. Rep. 44, 53 Pac. 933. And so, in the case of bonds by different sureties, given in successive stages of a legal proceeding, it has been held that the liability of each surety is prior to that of sureties on earlier bonds, and subsequent to that of sureties on later bonds: Culliford v. Walser, 158 N. Y. 65, 70 Am. St. Rep. 437, 52 N. E. 648; Hinckley v. Kreitz, 58 N. Y. 583. The same rule does not apply, however, to cumulative fidelity bonds, as where an administrator files a bond on obtaining his letters, and another on the sale of real estate. In such a case, the sureties on both bonds are equally liable: Cobb v. Haynes, 8 B. Mon. (Ky.) 137; Thompson v. Dekum, 32 Or. 506, 52 Pac. 517, 755; Pickens v. Miller, 83 N. C. 543; Powell v. Powell, 48 Cal. 234. See, also, Jones v. Hays, 3 Ired. Eq. (38 N. C.) 502, 44 Am. Dec. 78; Loring v. Bacon, 3 Cush. (Mass.) 465; Ketter v. Thompson, 13 Bush (Ky.), 287; Cherry v. Wilson, 78 N. C. 164.

4 Wesley Church v. Moore, 10 Pa. St. 273; Baxter v. Moore, 5 Leigh (Va.), 219; Butler v. Butler's Admr., 8 W. Va. 674.

5 Hamilton v. Johnston, 82 Ill. 39.

6 Hall v. Smith, 5 How. (U. S.) 96, 12 L. ed. 66.

7 Culmer v. Wilson, 13 Utah, 129, 57 Am. St. Rep. 713, 44 Pac. 833.

8 Dickey v. Rogers, 7 Martin (La.), N. S., 588; Apgar's Admr. v. Hiler, 4 Zab. (24 N. J. L.) 812.

9 Executors of White v. White, 30 Vt. 338; McPherson v. Meek, 30 Mo. 345; Carter v. Black, 4 Dev. & B. (N. C.) 425.

out request or subsequent ratification is not entitled to indemnity from the latter.¹⁰

§ 913. **Conditions of Recovery.**—The action being for reimbursement, some payment must first have been made by the plaintiff.¹¹ It may, however, have been only a partial payment.¹² The debt may be paid before it is due, but there can be no recovery from the principal debtor, of course, until his obligation to the creditor has matured.¹³ A cash payment is not necessary, provided there be a total or partial satisfaction of the obligation, at the surety's expense. If payment has been exacted from his property, that is sufficient.¹⁴ So if he has given his note, which the creditor has accepted

¹⁰ *McShirley v. Birt*, 44 Ind. 382; *Montgomery v. Gibbs*, 40 Iowa, 652; *Richardson v. Williams*, 49 Me. 558; *Winsor v. Savage*, 9 Met. (Mass.) 346; *Watkins v. Richmond College*, 41 Mo. 302.

It has been held, however, that an implied *assumpsit* may be based upon a subsequent ratification, and that if the debtor, in a suit by the creditor, set up such payment as a defense, that is a sufficient ratification: *Neely v. Jones*, 16 W. Va. 625, 37 Am. Rep. 794; *Crumlish v. Central Imp. Co.*, 38 W. Va. 390, 45 Am. St. Rep. 872, 18 S. E. 456, 23 L. R. A. 120; *Kenan v. Holloway*, 16 Ala. 53, 50 Am. Dec. 162. It would seem that payment by a stranger is not a discharge by performance, but rather in the nature of a contract between the stranger and the creditor, for the discharge of the debtor. Such a contract would not become irrevocable by the parties to it, and therefore not an absolute defense for the debtor, until accepted by him: See *Gifford v. Corrigan*, 117 N. Y. 257, 15 Am. St. Rep. 508, 22 N. E. 756, 6 L. R. A. 610. A ratification must be presumed, therefore, from the setting up of the defense, and the decisions cited above, therefore, seem well founded.

¹¹ *Covey v. Neff*, 63 Ind. 391; *Estate of Hill*, 67 Cal. 238, 7 Pac. 664.

¹² A surety is entitled to separate reimbursement for every partial payment made: *Bullock v. Campbell*, 9 Gill (Md.), 182; *Hall v. Hall*, 10 Humph. (Tenn.) 352.

¹³ *White v. Miller*, 47 Ind. 385; *Ross v. Menefee*, 125 Ind. 432, 25 N. E. 545.

¹⁴ *Lord v. Staples*, 23 N. H. 448; *Bonney v. Seely*, 2 Wend. 481.

in satisfaction.¹⁵ The surety party need not actually have been sued.¹⁶ But he must have been under at least a *prima facie* liability to pay, and have made the payment in ignorance of any valid and meritorious defense.¹⁷

§ 914. **Amount of Recovery—Incidents of Right.**—The action being for reimbursement, the surety can recover only what he has actually paid out, even though he has thereby compromised and satisfied a debt of a larger amount.¹⁸ Costs reasonably incurred in the defense of an action brought by the creditor are regarded as part of the damages for which the surety is entitled to compensation.¹⁹

The right to sue for actual reimbursement does not arise until some payment has been made by the surety,

15 *Doolittle v. Dwight*, 2 Met. (Mass.) 561; *Mims v. McDowell*, 4 Ga. 182; *Pearson v. Parker*, 3 N. H. 366. It would seem, however, that the surety should be required to show that he can be compelled to pay the note: See *Stone v. Hammell*, 83 Cal. 547, 17 Am. St. Rep. 772, 23 Pac. 703. See, also, *Bennett v. Buchanan*, 3 Ind. 47.

16 *Mauri v. Heffernan*, 13 Johns. 58.

17 Payment by a surety with knowledge of a good defense will not entitle him to reimbursement: *Noble v. Blount*, 77 Mo. 235; *Kimble v. Cummins*, 3 Met. (Ky.) 327. A surety is not bound, however, to rely on the statute of frauds, as a defense: *Beal v. Brown*, 13 Allen, 114. A surety who pays a matured note, without knowledge of a failure of the consideration therefor, is entitled to reimbursement: *Gasquet v. Oakey*, 19 La. 76.

18 "He is entitled to recover the amount paid, and not the amount extinguished by that payment": *Bonney v. Seely*, 2 Wend. 481, per Savage, C. J. See, also, *Caton v. Lambert*, 1 Neb. 339; *Pickett v. Bates*, 3 La. Ann. 627; *Delaware etc. R. R. Co. v. Oxford Iron Co.*, 38 N. J. Eq. 151. Where a surety pays a debt in depreciated bank notes, he is entitled to recover from the principal debtor only the value of the notes: *Butler v. Butler's Admr.*, 8 W. Va. 674.

19 *Hulett v. Soulard*, 26 Vt. 295; *Downer v. Baxter*, 30 Vt. 467; *Bennett v. Dowling*, 22 Tex. 660; *Butler v. Butler's Admr.*, 8 W. Va. 674. The rule is to the contrary where the costs were unreasonably incurred: *Cranmer v. McSwords*, 26 W. Va. 412; *Beckley v. Munson*, 22 Conn. 299.

and the period of limitation for each payment begins to run when the payment is made, provided the obligation is then due. And as the action is based on an implied promise, the period applying to such actions governs.²⁰ So, also, the fact that the principal debtor has received a discharge in bankruptcy is no defense to an action by the surety for reimbursement, on account of a payment made after the discharge, at least where the bankruptcy statute makes no provision for proof, by sureties, of their contingent claims.²¹

But while the right to reimbursement does not arise until payment by the surety, he is nevertheless, for some purposes, regarded as a creditor from the time he first became bound as a surety, and so can set aside a fraudulent conveyance or homestead made between that time and the time of payment.²²

§ 915. Contribution—Statement of Doctrine—Jurisdiction in Equity.—When there are two or more parties bound

²⁰ *Thayer v. Daniels*, 110 Mass. 345; *Scott v. Nichols*, 27 Miss. 94, 61 Am. Dec. 503; *Shepard v. Ogden*, 2 Seam. (Ill.) 257; *Wesley Church v. Moore*, 10 Pa. St. 273; *Bullock v. Campbell*, 9 Gill (Md.), 182; *Reid v. Flippen*, 47 Ga. 273.

²¹ *McMullen v. Bank of Penn Township*, 2 Pa. St. 343; *Cake v. Lewis*, 8 Pa. St. 493. See, however, *Mace v. Wells*, 7 How. (U. S.) 272, 12 L. ed. 698.

²² *Choteau v. Jones*, 11 Ill. 300; *Hatfield v. Merod*, 82 Ill. 113. "It is clear that the contract of a principal with his surety, to indemnify him for any payment which the latter may make to the creditor, in consequence of the liability assumed, takes effect from the time when the surety becomes responsible for the debt of the principal. It is then that the law raises the implied promise or contract of indemnity. No new contract is made when the money is paid by the surety, but the payment relates back to the time when the contract was entered into, by which the liability to pay was incurred. The payment only fixes the amount of damages for which the principal was liable, under his original agreement to indemnify the surety": *Rice v. Southgate*, 16 Gray, 142, per Bigelow, J., in a case testing the principal's right to a homestead. To the effect that

in the same degree by a common burden, equity demands, as between themselves, that each shall discharge a proportionate share, and when one of such parties has actually paid or satisfied more than his fair share of the burden, he is entitled to a contribution from each and all of the others similarly bound, in order to reimburse him for the excess paid over his share, and thus to equalize their common burden.

This right to contribution, after payment, while originally a matter for the exclusive cognizance of courts of equity, was long ago adopted and enforced by courts of law, but the equitable action still remains, and in some cases, has distinct advantages. The legal action, except under the reformed procedure, would seem to be confined to a separate suit against each surety, for an aliquot part of the loss.²³ And in most jurisdictions, the recovery at law seems to be confined to a sum based upon the whole number of sureties originally liable, while in equity it is based upon the number of solvent sureties within the jurisdiction of the court.²⁴ In the

a surety cannot bring his action to set aside the fraudulent conveyance, until he has paid the debt, and exhausted his remedies at law, see *Ellis v. Southwestern Land Co.*, 108 Wis. 313, 81 Am. St. Rep. 909, 84 N. W. 417.

A surety, where the principal debtor is insolvent, may retain, for his own indemnity, any funds of the principal debtor which he has in his possession: *Abbey v. Van Campen*, 1 Freem. Ch. (Miss.) 273.

²³ *Thompson v. Hibbs* (Or.), 76 Pac. 778; *Weimer v. Talbot* (W. Va.), 49 S. E. 372.

²⁴ *Williams v. Riehl*, 127 Cal. 365, 59 Pac. 762, 78 Am. St. Rep. 60; *Sloan v. Gibbs*, 56 S. C. 480, 76 Am. St. Rep. 559, 35 S. E. 408; *Gross v. Davis*, 87 Tenn. 226, 10 Am. St. Rep. 635, 11 S. W. 92; *Fischer v. Gaither*, 32 Or. 161, 51 Pac. 736; *Weimer v. Talbot* (W. Va.), 49 S. E. 372. This distinction seems without reason, however, and, accordingly a number of courts of law have adopted the equitable rule in full: *Henderson v. McDuffee*, 5 N. H. 38, 20 Am. Dec. 557; *Mills v. Hyde*, 19 Vt. 59, 46 Am. Dec. 177; *Harris v. Ferguson*, 2 Bail. (S. C.) 397.

equitable action, the principal and all co-sureties may be joined, and as full indemnity as possible obtained from the principal, the balance of the debt being distributed equally among the solvent sureties.²⁵

§ 916. **Parties Entitled to Contribution.**—The most conspicuous and numerous examples of contribution arise in cases where one of two or more co-sureties, having discharged more than his fair share of the debt or obligation, is held entitled to contribution from the rest.²⁶ In these cases, the parties must be true co-sureties, liable in the same degree, and not one liable subsequently to, or as surety for, another.²⁷ But this being so, it is immaterial that their liability depends upon different

²⁵ *McClintock v. Fontaine*, 119 Fed. 448.

²⁶ As illustrations of this doctrine, see *Dering v. Earl of Winchelsea*, 1 Cox, 318, 1 Lead. Cas. Eq. 120, 124, 134; *Craythorne v. Swinburne*, 14 Ves. 160; *Primrose v. Bromley*, 1 Atk. 89; *Stirling v. Forrester*, 3 Bligh, 575; *Young v. Reynell*, 9 Hare, 809; *Hitchman v. Stewart*, 3 Drew. 271; *Mayor of Berwick v. Murray*, 7 De Gex, M. & G. 497; *Whiting v. Burke*, L. R. 6 Ch. 342; *Wolmershausen v. Gullick*, [1893] 2 Ch. 514; *Broughton v. Wimberly*, 65 Ala. 549; *White v. Banks*, 21 Ala. 705, 56 Am. Dec. 283; *McDavid v. McLean*, 202 Ill. 354, 66 N. E. 1075; *Morgan v. Smith*, 70 N. Y. 537; *Johnson v. Harvey*, 84 N. Y. 363, 38 Am. Rep. 515; *Smith v. State*, 46 Ind. 617; *Bright v. Lennon*, 83 N. C. 183; *Stephens v. Meek*, 6 Lea (Tenn.), 226; *Powell v. Powell*, 48 Cal. 234; *Dussol v. Bruguere*, 50 Cal. 456; *Strong v. Mitchell*, 19 Vt. 644; *Wayland v. Tucker*, 4 Gratt. 267, 50 Am. Dec. 76; *Moore v. Baker*, 34 Fed. 1; *Bishop v. Smith* (N. J.), 57 Atl. 874; *Fischer v. Gaither*, 32 Or. 161, 51 Pac. 736; *Culliford v. Walser*, 158 N. Y. 65, 70 Am. St. Rep. 437, 52 N. E. 648; *Sloan v. Gibbes*, 56 S. C. 480, 76 Am. St. Rep. 559, 35 S. E. 408; *Boardman v. Paige*, 11 N. H. 431; *Graves v. Smith*, 4 Tex. Civ. App. 537, 23 S. W. 603.

²⁷ *Robertson v. Deatherage*, 82 Ill. 511. As to when the liability of one surety or set of sureties will be considered prior or subsequent to that of another, see § 912, note 3. As against parties whose liability is prior to that of the surety discharging the debt, the latter has a right to complete indemnity: See § 912. As against parties only subsequently liable, he cannot, of course, recover at all: *Wells v. Miller*, 66 N. Y. 255; *Oldham v. Broom*, 28 Ohio St. 41.

instruments, or arose at different times, or exists for different amounts, so long as they are sureties for the same debt or obligation of the same principal debtor.²⁸ It has been held that parties who have become bound without their consent, and through the fraud of a common agent, are nevertheless entitled to contribution among themselves.²⁹ And where the suretyship obligation is imposed by operation of law, as in the case of individual liability of corporate stockholders, the rule is the same.³⁰

The right to contribution exists also among joint principal debtors, where one has paid more than his just proportion of the principal debt.³¹ So, with joint co-contractors of any sort, whether the principal obligation call for the payment of money or the performance of an act, one who performs the act, or discharges more than his fair share of the expense, is entitled to recover the excess from the others.³²

²⁸ *Powell v. Powell*, 48 Cal. 234; *Sloan v. Gibbes*, 56 S. C. 480, 76 Am. St. Rep. 559, 35 S. E. 408. *Fuller v. Ins. Co.*, 36 Fed. 469, 1 L. R. A. 891, illustrates the application of this doctrine to the case of several fire insurance companies, bound by separate policies, taken out at different times, for different amounts. It was held that a company paying the entire loss was entitled to contribution from the others, in proportion to the amounts named in their respective policies.

²⁹ *McBride v. Potter-Lovell Co.*, 169 Mass. 7, 61 Am. St. Rep. 265, 47 N. E. 242. See, however, *Grubb v. Cottrell*, 62 Pa. St. 23.

³⁰ *Wolters v. Hemingway*, 114 Cal. 433, 46 Pac. 277.

³¹ *Fletcher v. Grover*, 11 N. H. 368, 35 Am. Dec. 497; *Mills v. Hyde*, 19 Vt. 59, 46 Am. Dec. 177; *Chenault v. Bush*, 84 Ky. 528, 2 S. W. 160; *Chipman v. Morrill*, 20 Cal. 130; *Van Petten v. Richardson*, 68 Mo. 379; *Kimball v. Williams*, 65 N. Y. Supp. 69, 51 App. Div. 616; *Hodgson v. Baldwin*, 65 Ill. 532. The rule is the same in the case of a joint judgment debtor paying more than his share of the judgment: *Thomas v. Hearn*, 2 Port. (Ala) 262; *Dent v. King*, 1 Ga. 200, 44 Am. Dec. 638; *Power v. Rees*, 189 Pa. St. 496, 42 Atl. 26.

³² Joint covenant to warrant and defend title: *Hickman v. Searcy*, 17 Tenn. (9 Yerg.) 47; agreement for care and support of others:

In the case of joint tort-feasors, equity ordinarily leaves the burden of compensation for the wrong wherever it may happen to be, as no one will be permitted to show his own wrong, in asking assistance of equity.³³ But where several are jointly responsible for an act not necessarily nor ordinarily unlawful, one who acted without moral guilt or wrongful intent in the commission of the act, and who has paid the damages caused thereby, may recover contribution from the other wrongdoers.³⁴

Joint or joint and several liability is of the essence in the cases mentioned above, and where a number of parties are each severally bound for a specific portion of a debt, either as principals or as sureties, and one

Jacobsmeier v. Jacobsmeier, 88 Mo. App. 102; *Odiorne v. Moulton*, 64 N. H. 211, 9 Atl. 625; two persons jointly liable to maintain a dam: *Webb v. Laird*, 62 Vt. 448, 22 Am. St. Rep. 121, 20 Atl. 599.

33 *Johnson v. Torpy*, 35 Neb. 604, 37 Am. St. Rep. 447, 53 N. W. 575; *Minnis v. Johnson*, 1 Duvall, 171; *Rhea v. White*, 3 Head, 121; *Becker v. Farwell*, 25 Ill. App. 432; *Boyer v. Bolender*, 129 Pa. St. 324, 15 Am. St. Rep. 723, 18 Atl. 127.

34 Cf. § 912, note 3, *supra*, as to indemnity. This doctrine is well illustrated in cases of a levy of attachment or execution by several creditors simultaneously, which turns out to have been wrongful, because of a mistake as to the ownership of the goods or the jurisdiction of the court: *Farwell v. Becker*, 129 Ill. 261, 16 Am. St. Rep. 267, 21 N. E. 792, 6 L. R. A. 400; *Vandiver v. Pollak*, 107 Ala. 547, 54 Am. St. Rep. 118, 19 South. 180. So where several co-trustees are jointly bound for the default of one of their number, which is made good by another and innocent trustee, he is entitled to contribution from the others: *Marsh v. Harrington*, 18 Vt. 150. See, generally, as to contribution among co-trustees, *Pom. Eq. Jur.*, § 1081. The same principle has been applied where one partner has paid damages for the tort of an employee of the firm: *Bailey v. Bussing*, 28 Conn. 455; *Horback's Admr. v. Elder*, 18 Pa. St. 33. Some courts allow contribution as between parties who are under a joint obligation to repair, and whose failure to do so has caused damage for which one of them has settled: *Ankenny v. Moffitt*, 37 Minn. 109, 33 N. W. 320; *Armstrong County v. Clarion County*, 66 Pa. St. 218, 5 Am. Rep. 368.

pays more than he was bound for, he is entitled to no contribution from the others for such excess.³⁵ As among themselves, each party is considered a principal debtor for his own share of the obligation, and a surety for the remainder.³⁶

The doctrine of contribution is also applied in cases where an encumbrance, binding several pieces of property equally, is paid off by the owner of one of them. In these cases, aside from any right of contribution arising from the personal liability of the parties, under the doctrine as already stated, the party making the payment is entitled to a lien upon the property of the others, to secure contribution from the latter for their share of the expense.³⁷ Here, as in cases of personal

³⁵ *Curtis v. Parks*, 55 Cal. 106. See, however, *City of Deering v. Moore*, 86 Me. 181, 41 Am. St. Rep. 534, 28 Atl. 988, where contribution was allowed among several sureties bound "severally and not jointly," in the sum of five thousand dollars each, where the whole loss was paid by one of them.

³⁶ See *Crafts v. Mott*, 4 N. Y. 604. This comparison suggests an analogy between contribution and indemnity. Following out the suggestion that the joint debtor is, as to payments above the amount of his own share, a surety, it follows that, as to such payments, he must be entitled to indemnity from the principals.

³⁷ See, for a full treatment of this subject, 3 Pom. Eq. Jur., §§ 1221-1226. The rule is illustrated in cases where land is devised or descends subject to a charge for debts, which one devisee or heir discharges: *Falley v. Gribbling*, 128 Ind. 110, 22 N. E. 723, 26 N. E. 794; *Swaine v. Perrine*, 5 Johns. Ch. 482, 9 Am. Dec. 318; where such a charge is discharged by the widow claiming dower: *Danforth v. Smith*, 23 Vt. 247; where portions of land subject to the same mortgage are granted to two different parties at the same time, and the mortgage is discharged by one of them: *Briscoe v. Power*, 85 Ill. 420; *Taylor v. Porter*, 7 Mass. 355 (in such a case neither can, by purchasing the mortgage, enforce it in full against the other: *Aiken v. Gale*, 37 N. H. 501); where one of several beneficiaries of a life insurance policy has paid the premiums thereon: *Stockwell v. Mutual Life Ins. Co.*, 140 Cal. 198, 98 Am. St. Rep. 25, 73 Pac. 833; where a co-tenant has discharged a mortgage or other lien on the common property: *Oliver v. Montgomery*, 42 Iowa, 36; *Moon v. Jen-*

liability, however, the various properties must be liable in the same degree.³⁸ And, there being no personal liability to a common creditor, there should be none to the party discharging the encumbrance, and the latter, in enforcing contribution, should be confined to rights against the property itself.³⁹ The right of one of two co-tenants who has made necessary repairs, to contribution from the other, is recognized in equity.⁴⁰

nings, 119 Ind. 130, 12 Am. St. Rep. 383, 20 N. E. 748, 21 N. E. 471; Calkins v. Steinbach, 66 Cal. 117, 4 Pac. 1103; Packard v. King, 3 Cal. 214; McClintock v. Fontaine, 119 Fed. 448. A charge for dower is regarded as an encumbrance within this rule: Eliason v. Eliason, 3 Del. Ch. 260.

38 See 3 Pom. Eq. Jur., §§ 1224-1226. Where the owner of two lots, both subject to a judgment lien, conveys one of them by warranty deed, the liability of the lot sold is, in equity, subsequent to that of the other, even as against a subsequent purchaser of the latter and the latter purchaser, upon payment of the lien, is not entitled to contribution: Jenkins v. Craig, 22 Ind. App. 192, 52 N. E. 423, 53 N. E. 427. And similarly, where different portions of mortgaged premises are sold by the mortgagor, with warranty, to successive purchasers with notice, the liability of the portions is in the inverse order of their alienation: Niles v. Harmon, 80 Ill. 396; Brown v. Simons, 44 N. H. 475; Hill v. McCarter, 27 N. J. Eq. 41; Cary v. Folsom, 14 Ohio, 365. Even in this case, however, in Kentucky and Iowa, equal contribution is the rule: Massie v. Wilson, 16 Iowa, 390; Dickey v. Thompson, 8 B. Mon. 313. But this is not so as to a portion retained by the mortgagor himself: Bates v. Ruddick, 2 Iowa, 423, 65 Am. Dec. 774.

39 Cases cited in note 37, *supra*. Contrary statements are sometimes met with. These are perhaps due to confusion with cases of subrogation, or cases where there is a common personal liability in addition to the collateral security. Under such circumstances, of course, the party discharging the encumbrance should have both the personal right of action and the lien.

40 See 3 Pom. Eq. Jur., § 1240, for the implied lien in such cases. In Hill v. Crocker, 87 Me. 208, 47 Am. St. Rep. 321, 32 Atl. 878, a part owner of a vessel who paid for necessary repairs in a foreign port, was allowed a personal action in equity, against other owners, for contribution. See, also, Schmidt v. Constans, 82 Minn. 347, 83 Am. St. Rep. 437, 85 N. W. 173; Rindge v. Baker, 57 N. Y. 209, 15 Am. Rep. 475.

§ 917. **Conditions Under Which Equitable Action is Maintainable.**—No right to reimbursement arises until one party has discharged more than his proportion of the common obligation, even though his co-debtor has paid nothing.⁴¹ This discharge may have been effected either by a cash payment, or in some other way, as by a new note.⁴² And it is not necessary that the payment should have been made under actual compulsion, or that the party making the payment should actually have been sued.⁴³ There must, however, have been an actual liability to pay, on the part of the person making the payment.⁴⁴ The other parties, however, may be compelled to contribute, even though, as against the original creditor, they would have a valid defense.⁴⁵

⁴¹ As to what is the fair share of each party, see § 918. See *Sawyer v. Lyons*, 10 Johns. 32. Payment of the interest due upon a joint obligation will entitle the party making the payment to contribution from the others for their share of the interest: *McCreedy v. Van Antwerp*, 24 Hun, 322. It is not necessary that the whole debt be discharged: *Pixley v. Gould*, 13 Ill. App. 565.

⁴² *Greene v. Anderson*, 102 Ky. 216, 19 Ky. Law Rep. 1187, 43 S. W. 195; *Chandler v. Brainard*, 31 Mass. (14 Pick.) 285. See, also, *Bishop v. Smith* (N. J.), 57 Atl. 874.

⁴³ *Pixley v. Gould*, 13 Ill. App. 565; *Jenkins v. Lockard's Admr.*, 66 Ala. 377.

⁴⁴ Where payment was made in good faith, under a *prima facie* liability, contribution is allowed, although there was a good defense, of which plaintiff was ignorant: *Hichborn v. Fletcher*, 66 Me. 209, 22 Am. Rep. 562. Where the debt is barred by the statute of limitations, ordinarily payment will not give rise to a right to contribution: *Buck v. Spofford*, 40 Me. 328; *Elliott v. Nichols*, 7 Gill (Md.), 85, 48 Am. Dec. 546; *Wheat Field v. Brush Valley Trop.*, 25 Pa. St. 112. In some cases, however, since a part payment or acknowledgment by one joint debtor revives the debt as to both, a party paying a barred debt is allowed contribution: *Camp v. Bostwick*, 20 Ohio St. 337, 5 Am. Rep. 669; *Peaslee v. Breed*, 10 N. H. 489, 34 Am. Dec. 178.

⁴⁵ *Boardman v. Paige*, 11 N. H. 431. Where the liability of a joint debtor (surety) is discharged, as to the creditor, by the death of the former, a co-surety paying the debt is nevertheless sometimes held entitled to contribution: *Conover v. Hill*, 76 Ill. 342.

Like every other party seeking the assistance of equity, a party seeking contribution must himself do equity, and any showing of bad faith, or negligence on the part of the person making the payment will defeat his right to contribution from the others.⁴⁶

In cases of co-suretyship, as a further condition to recovery, some courts insist that the party asking contribution shall first exhaust his remedies against the principal debtor, or show that the latter is insolvent.⁴⁷ This is considered unnecessary, however, in most states.⁴⁸

§ 918. **Amount of Recovery—Incidents of the Right.**—A party who has made a partial payment is not entitled to contribution, even though the others have paid nothing, until his own payment exceeds his proportionate share of the whole debt, and he is then entitled to collect a proportionate share only of the excess, from

See, also, *Bachelder v. Fiske*, 17 Mass. 464; *Aiken v. Peay*, 5 Strob. 15, 53 Am. Dec. 181. *Contra*, see Pom. Eq. Jur., § 409, 1st note. The rule is the same where one party has been discharged by the statute of limitations, which has not yet run against the party making the payment: *Aldrich v. Aldrich*, 56 Vt. 324, 48 Am. Rep. 791; *Glascock v. Hamilton*, 62 Tex. 143. So, also, where the creditor's claim against the defendant has been discharged in bankruptcy before payment by the plaintiff: *Dole v. Warren*, 32 Me. 94, 52 Am. Dec. 640; *Dunn v. Sparks*, 1 Ind. 397, 50 Am. Dec. 473.

⁴⁶ Where one party has wasted security given by the creditor, or failed to keep an agreement with his co-contractor, or misled the latter into entering the contract, no contribution will be allowed. For illustrations of this general doctrine, see *Labenelle v. Deconet*, 2 La. Ann. 545; *Hunt v. Hunt*, 45 N. J. Eq. 360, 13 Atl. 248, 19 Atl. 623; *P. Dougherty Co. v. Gring*, 89 Md. 535, 43 Atl. 912; *Rollins v. Taber*, 25 Me. 144; *Flanagan v. Duncan*, 133 Pa. St. 373, 19 Atl. 405, 7 L. R. A. 412.

⁴⁷ *Fischer v. Gaither*, 32 Or. 161, 51 Pac. 736; *Allen v. Wood*, 3 Ired. Eq. 386; *Morrison v. Poyntz*, 7 Dana, 307, 32 Am. Dec. 92.

⁴⁸ *Taylor v. Reynolds*, 53 Cal. 686; *Buckner v. Stewart*, 34 Ala. 529; *Sloo v. Pool*, 15 Ill. 47; *Rankin v. Collins*, 50 Ind. 158; *Boyer v. Marshall*, 44 Hun, 623.

each party, the proportionate share in each case being determined by dividing the total sum in question among the number of solvent parties within the jurisdiction of the court.⁴⁹ Whether a party is also entitled to contribution for reasonable costs spent in defending a suit, is a matter upon which authorities disagree.⁵⁰ When there are several distinct obligations with different penalties, to secure the same act, contribution between the different sureties is in proportion to the amount of the obligations signed by them, respectively.⁵¹

The right to a cash recovery arises when one party makes his first payment in excess of his fair proportion,

49 See § 915, note 24, *ante*. A co-obligor beyond the jurisdiction of the court has been considered as though insolvent, for purposes of contribution: *McKenna v. George*, 2 Rich. Eq. (S. C.) 15. See, also, *Fuselier v. Baineau*, 14 La. Ann. 764; *O'Brien v. Drexiluis*, 7 Ky. Law Rep. 519. In this reckoning, the total loss or burden is the total amount for which the parties are actually liable, and not, necessarily, the aggregate amount of the obligations that they have given.

50 That a party is entitled to contribution for reasonable costs and attorney's fees, where not expended foolishly, see *Gross v. Davis*, 87 Tenn. 226, 10 Am. St. Rep. 635, 11 S. W. 92; *Conolly v. Dolan*, 22 R. I. 60, 84 Am. St. Rep. 816, 46 Atl. 36; *Carter v. Fidelity & D. Co.*, 134 Ala. 369, 92 Am. St. Rep. 41, 32 South. 632; *Van Petten v. Richardson*, 68 Mo. 379; *Wagenseller v. Prettyman*, 7 Ill. App. 192. *Contra*, *Newcomb v. Gibson*, 127 Mass. 396; *Knight v. Hughes*, 3 Car. & P. 467; *John v. Jones*, 16 Ala. 454. Where the defense was authorized by the other parties, or where the costs were incurred in a suit against all of them, contribution is allowed: *Boardman v. Paige*, 11 N. H. 431; *Davis v. Emerson*, 17 Me. 64; *Newcomb v. Gibson*, 127 Mass. 396.

51 Where the plaintiff signed a sheriff's bond for two thousand dollars, and the defendants another for eighteen thousand dollars, and the loss paid by plaintiff was one thousand and fifty-two dollars and ninety-two cents, the loss was apportioned in the ratio of two thousand to eighteen thousand: *Armitage v. Pulver*, 37 N. Y. 494. See, also, *Young v. Shunk*, 30 Minn. 503, 16 N. W. 402; *Burnett v. Millsaps*, 59 Miss. 333.

and the statute of limitations, accordingly, runs from that time.⁵² The action is considered as based upon an implied contract, and the period of limitation applying to actions of this nature governs.⁵³ And since the liability to contribute is not complete until this payment, it follows that a discharge of one party, in bankruptcy, before payment by the other, is no defense to an action for contribution.⁵⁴

The right to contribution is assignable.⁵⁵

§ 919. Exoneration.—One who is bound by an obligation upon which another is primarily liable, may, if the obligation becomes due and remains unpaid, bring an action in equity, to compel the principal debtor to pay, and the creditor to receive payment of, the obligation, and thus to exonerate the party suing from his liability, and protect him from the unnecessary withdrawal of capital involved in making payment and suing for reimbursement.⁵⁶ And one who, without assuming any

⁵² *Sherwood v. Dunbar*, 6 Cal. 53; *Richter v. Henningsan*, 110 Cal. 530. See *Richter v. Blasingame*, 42 Pac. 1077; *Singleton v. Townsend*, 45 Mo. 379; *Camp v. Bostwick*, 20 Ohio St. 337, 5 Am. Rep. 669; *Durbin v. Kuney*, 19 Or. 71, 23 Pac. 661; *Singleton v. Moore, Rice Eq. (S. C.)* 110; *Culmer v. Wilson*, 13 Utah, 129, 57 Am. St. Rep. 713, 44 Pac. 833. Where payment is made before the maturity of the debt, however, no right of action accrues until maturity, and the period of limitation does not begin to run until then: *Truss v. Miller*, 116 Ala. 494, 22 South. 863.

⁵³ *Sexton v. Sexton*, 35 Ind. 88; *Faires v. Cockerell*, 88 Tex. 428, 31 S. W. 190, 639, 28 L. R. A. 528.

⁵⁴ *Ransom v. Keyes*, 9 Cow. 128; *Penn v. Bahnson*, 89 Va. 253, 15 S. E. 586. See, also, note 45, § 917, *ante*.

⁵⁵ *Pine Hill Coal Co. v. Harris*, 7 Ky. Law Rep. 519; *Pulley v. Pass*, 123 N. C. 168, 31 S. E. 478.

⁵⁶ This action is analogous to a *quia timet* action: See Pom. Eq. Jur., § 1417, and note; *Stephenson v. Taverners*, 9 Gratt. (Va.) 398; *The Fame Ins. Co.'s Appeal*, 83 Pa. St. 396; *Ardesco Oil Co. v. N. A. etc. Oil Co.*, 66 Pa. St. 381; *Bishop v. Day*, 13 Vt. 81, 37 Am. Dec. 582; *King v. Baldwin*, 2 Johns. Ch. 554, 17 Johns. 384, 8 Am. Dec. 415; *Norton v. Reid*, 11 S. C. 593; *Gilliam v. Esselman*, 5 Sneed

personal liability, has mortgaged property for the security of another's debt, may likewise maintain an action to compel the principal debtor to exonerate his property.⁵⁷ And since several co-sureties, as among themselves, are considered each as principal debtor for his own share, and as surety for the others, it is held that a surety, against whom judgment has been obtained for the full amount, but who has, as yet, paid nothing, may compel his co-sureties to contribute their shares, and so to exonerate him from liability to that extent.⁵⁸ The inadequacy of the remedy at law, in failing to provide compensation for damages which may be caused by even a temporary withdrawal of a large amount of capital, seems to be the basis of this action, and should, it is submitted, permit of a similar action by any party to an obligation, against another whose liability is equal with, or prior to his own. The language of the court and cases cited in *Wolmershausen v. Gullick*⁵⁸ would seem to bear this out.⁵⁹ Similarly, if a mortgage has been given to a party subsequently liable, for his indemnity, he may, even before payment, secure a foreclosure of the mortgage, and application of

(Tenn.), 86; *Irick v. Black*, 17 N. J. Eq. 189; *Rice v. Downing*, 12 B. Mon. 44; *Delaware, L. & W. R. R. Co. v. Oxford Iron Co.*, 38 N. J. Eq. 151. "It seems to be well settled that a surety against whom a judgment has been rendered, may, without making payment himself, proceed in equity against his principal, to subject the estate of the latter to the payment of the debt, in exoneration of the surety": *Dobie v. Fidelity & Casualty Co. of New York*, 95 Wis. 540, 60 Am. St. Rep. 135, 70 N. W. 482, citing *Pom. Eq. Jur.*, § 1417. See, however, *White v. Schurer*, 4 Baxt. 23.

⁵⁷ *Savage v. Winchester*, 15 Gray, 453. See, also, *Gresham v. Ware*, 79 Ala. 192; *Bell v. McConkey*, 82 Va. 176.

⁵⁸ See *Wolmershausen v. Gullick*, [1893] 2 Ch. 514, reviewing the English decisions.

⁵⁹ That one surety may maintain an action for exoneration against another surety subsequently liable, see *Hayden v. Thrasher*, 18 Fla. 795.

the proceeds to the payment of the principal debt.⁶⁰ Since this is an action to compel payment to be made, not to the surety himself, but to the creditor, the latter must be made a party. Otherwise the decree can be only conditional.⁶¹

§ 920. Subrogation.—When an obligation is discharged by one not primarily liable for it, but who believes himself to be acting either in performance of a legal duty, or for the protection of a legal right, or at the request of the party ultimately bound, and even in certain other cases, favored by public policy, where none of the above circumstances may be present, the party thus discharging the obligation is entitled in equity to demand, for his reimbursement, and subject to any superior equities, the performance of the original obligation, and the application thereto of all securities and collateral rights held by the creditor. The same equity which seeks to prevent the unearned enrichment of one party, at the expense of another, by actions for reimbursement, contribution, and exoneration, operates here, by creating a relation somewhat analogous to a constructive trust, in favor of the subrogee, or party making the payment, in all legal rights held by the creditor, and the subrogee may proceed to enforce the trust.⁶²

⁶⁰ *Hellams v. Abercrombie*, 15 S. C. 110, 40 Am. Rep. 684. The surety may, at the same time, compel the principal debtor to pay any deficiency remaining due: *Call v. Scott*, 4 Call (Va.), 402.

⁶¹ *Call v. Scott*, 4 Call (Va.), 402; *Wolmershausen v. Gullick*, [1893] 2 Ch. 514. Some cases holding that no action can be maintained before payment, seem to be based upon difficulties arising from the fact that the creditor is not a party: See *Strother's Admr. v. Mitchell's Exr.*, 80 Va. 149; *Gourdin v. Trenholm*, 25 S. C. 362.

⁶² Subrogation is, in most cases, rather an additional remedy than an additional right, and may exist concurrently with, and as a further security to, the right to a simple action for reimbursement or exon-

§ 921. **Parties Entitled to Subrogation.**—Payment of the debt of another, as by a mere volunteer, will not, of itself, entitle the party making the payment to subrogation. Equity will relieve, in general, only those who could not well have relieved themselves, and these may be divided roughly into the three classes already suggested, that is: first, those who act in performance of a legal duty, arising either by express agreement or by operation of law; second, those who act under the necessity of self-protection; third, those who act at the request of the debtor, directly or indirectly, or upon invitation of the public, and whose payments are favored by public policy.

Whenever a party discharges an obligation in performance of a legal duty—that is, an obligation for the performance of which he was legally bound—but for which his liability was subsequent to that of another party, he is entitled to be subrogated to, and to have the benefit of, all rights of the creditor and all securities which may at any time have been put into the creditor's hands by a party whose liability is prior to his own, or which the creditor may have obtained from such

eration. The fact that a party entitled to reimbursement and also to subrogation is entitled to two distinct remedies, seems often to be overlooked, to the confusion of both doctrines. For examples of this see cases on the statute of limitations, note 113, *post*. As will be seen, however, the right to subrogation often exists where the simple action for reimbursement or contribution could not be maintained. For a kind of subrogation depending upon another principle, see § 925, *post*. The term is also used to designate the transfer of the rights of attaching creditors to a trustee in bankruptcy, by order of court: See *In re Sentenne v. Green Co.*, 120 Fed. 436; and the transfer, by garnishment, of a judgment debtor's right against his debtor: See *Hazelton v. Douglas*, 97 Wis. 214, 65 Am. St. Rep. 122, 72 N. W. 637; and the right of the beneficiary of a promise, who is not a party to it, to enforce it for his own benefit: See *Riggins v. Hilliard*, 56 Ark. 476, 35 Am. St. Rep. 113, 20 S. W. 402.

party.⁶³ The most conspicuous example of this class is the ordinary surety on an obligation for the payment of money, who has become such at the request of the principal debtor.⁶⁴ Such a party is entitled to subrogation, though he appear on the principal obligation, not as a surety, but as a joint maker, with the principal, and apparently himself a principal,⁶⁵ or though he be bound by a separate instrument.⁶⁶ And one who becomes surety, not on an obligation to pay a certain sum, but on a penal obligation, conditioned on the performance of some act by the principal, may likewise become entitled to subrogation.⁶⁷ And all this is true,

⁶³ For a discussion of questions of priority and subsequence of liability, see § 912, note 3, *ante*.

⁶⁴ 4 Pom. Eq. Jur., § 1419. For examples of this class of subrogation, see *Mahew v. Crickett*, 2 Swanst. 185; *Hodson v. Shaw*, 3 Mylne & K. 183; *Pearl v. Deacon*, 24 Beav. 186, 1 De Gex & J. 461; *Irick v. Black*, 17 N. J. Eq. 189; *Kelly v. Herrick*, 131 Mass. 373; *Storms v. Storms*, 3 Bush, 77; *Lewis v. Palmer*, 28 N. Y. 71; *Keith v. Hudson*, 74 Ind. 333; *Hayes v. Ward*, 4 Johns. Ch. 123; *Forrest's Exrs. v. Luddington*, 68 Ala. 1; *Lochenmeyer v. Fogarty*, 112 Ill. 572; *Penn v. Ingles*, 82 Va. 65; *Ward's Appeal*, 100 Pa. St. 289; *Taylor v. Tarr*, 84 Mo. 420. This class includes guarantors of negotiable paper: *Conner v. Howe*, 35 Minn. 518, 29 N. W. 314; *Havens v. Willis*, 100 N. Y. 488, 3 N. E. 313. See, also, *Opp v. Ward et al.*, 125 Ind. 241, 21 Am. St. Rep. 220, 24 N. E. 974; *Peebles v. Gray*, 115 N. C. 38, 44 Am. St. Rep. 429, 20 S. E. 173.

It is not necessary that there be a personal obligation. One who mortgages property to secure the debt of another may become entitled to subrogation: *Van Orden v. Durham*, 35 Cal. 136; *Snook v. Munday*, 96 Md. 514, 54 Atl. 77.

⁶⁵ 4 Pom. Eq. Jur., § 1419, note; *Snook v. Munday*, 96 Md. 514, 54 Atl. 77. An accommodation acceptor may be entitled to subrogation against the drawer: *Bank of Toronto v. Hunter*, 4 Bosw. (N. Y.) 646.

⁶⁶ *Hevener v. Berry*, 17 W. Va. 474.

⁶⁷ This applies to a surety on a contractor's bond as for the conveyance of property: *Freeman v. Mebane*, 2 Jones Eq. (N. C.) 44; to a surety on a fidelity bond, as for a guardian: *Brown et al. v. Fidelity & I. Co. (Tex.)*, 80 S. W. 593; or an administrator's bond: *Townsend v. Whitney*, 75 N. Y. 425, 15 Hun, 93; to a surety on a

not only of a surety for the principal debtor, but of one who, as surety for, or indemnitor of a surety, is compelled to pay the obligation of the principal debtor.⁶⁸ It seems immaterial, moreover, whether or not the debtor has requested, or consented to, the assumption of the surety's obligation, and the latter may be entitled to subrogation though he assumed his obligation without the knowledge, or even against the will, of the principal debtor.⁶⁹ Nor is it material whether the principal obligation arises *ex contractu* or *ex delicto*.⁷⁰ Thus, one responsible, by bond, for a breach of trust or neglect of duty of another, may be entitled to subrogation.⁷¹ And a fire insurance company bound by its policy to make good a loss caused by fire resulting from the negligence of a third party stands in the position of a surety for the latter, and, upon payment, is entitled to subrogation to the rights of the insured against such party.⁷²

court bond, such as an injunction bond: *Darrow v. Summerhill*, 93 Tex. 92, 77 Am. St. Rep. 833, 53 S. W. 680; or an appeal bond, the surety in this case being subrogated to the lien of the very judgment appealed from: *Pierce v. Higgins*, 101 Ind. 178. See, also, *March v. Barnett*, 121 Cal. 419, 66 Am. St. Rep. 44, 53 Pac. 933; a surety on the appeal bond of a tort-feasor is as well entitled to subrogation as any other: *Kolb v. National Surety Co. et al.*, 176 N. Y. 233, 68 N. E. 247.

⁶⁸ *Rittenhouse v. Levering*, 6 Watts & S. (Pa.) 190.

⁶⁹ *Nettleton v. Ramsey County Land & Loan Co.*, 54 Minn. 395, 40 Am. St. Rep. 342, 56 N. W. 128. This is more forcibly illustrated by the insurance cases cited below, note 72, the insurance companies there being subrogated to the policy-holder's right against a party who, at the time of the issuance of the policy, was perhaps entirely unknown to them.

⁷⁰ A surety on the appeal bond of a tort-feasor may be entitled to subrogation: *Kolb v. National Surety Co. et al.*, 176 N. Y. 233, 68 N. E. 247.

⁷¹ See *Brown et al. v. Fidelity & D. Co. (Tex.)*, 80 S. W. 593; *Townsend v. Whitney*, 75 N. Y. 425, 15 Hun, 93.

⁷² "The liability of the railroad company [wrongdoer] is, in legal effect, first and principal, and that of the insurer secondary, not in order of time, but in order of ultimate liability. The assured may

Coming also within the class of payments made in performance of legal duty are payments made by parties whose obligation is imposed, not directly by contract, but by operation of law. Payments by a stockholder in discharge of an individual liability for corporate debts, or by a partner for debts of the firm, are

first apply to whichever of these parties he pleases; to the railroad company, by his right at law, or to the insurance company, in virtue of his contract. But if he applies first to the railroad company, who pay him, he thereby diminishes his loss by the application of a sum arising out of the subject of the insurance, to wit, the building insured, and his claim is for the balance. And it follows as a necessary consequence that if he first applies to the insurer, and receives his whole loss, he holds the claim against the railroad company in trust for the insurer. Where such an equity exists, the party holding the legal right is conscientiously bound to make an assignment in equity to the person entitled to the benefit; and if he fails to do so, the *cestui que trust* may sue in the name of the trustee, and his equity interest will be protected": Per Shaw, C. J., in *Hart v. Western R. R. Co.*, 13 Met. (Mass.) 99, 46 Am. Dec. 719. See, also, *Philadelphia Underwriters et al. v. Fort Worth & D. C. Ry. Co.*, 31 Tex. Civ. App. 104, 71 S. W. 419; *Mobile Ins. Co. v. Columbia & Greenville R. R. Co.*, 41 S. C. 408, 44 Am. St. Rep. 725, 19 S. E. 858; *Home Mutual Ins. Co. v. Oregon Ry. & Nav. Co.*, 20 Or. 569, 23 Am. St. Rep. 151, 26 Pac. 857; *Regan v. N. Y. & New Eng. R. R. Co.*, 60 Conn. 124, 25 Am. St. Rep. 306, 22 Atl. 503; *Paekham v. German Fire Ins. Co.*, 91 Md. 515, 80 Am. St. Rep. 461, 46 Atl. 1066, 50 L. R. A. 828; *Garrison v. Memphis Ins. Co.*, 19 How. (60 U. S.) 312, 15 L. ed. 656; *Hamburg-Bremen Fire Ins. Co. v. Atlantic Coast Line R. R. Co.*, 132 N. C. 75, 43 S. E. 548.

An accident or life insurance company, however, is held *not* entitled to subrogation to the rights of the insured against a party whose negligence caused the accident or loss of life: *Aetna Life Ins. Co. v. J. B. Parker & Co.*, 96 Tex. 287, 72 S. W. 168; 30 Tex. Civ. App. 521, 72 S. W. 621. These cases cite and rely on *Mobile Ins. Co. v. Brame*, 95 U. S. 754, 24 L. ed. 580, and *Connecticut etc. Ins. Co. v. New York etc. Ry. Co.*, 25 Conn. 265, 65 Am. Dec. 571, both holding that no action will lie at law, by a life insurance company, to recover indemnity from one whose wrong caused the loss of life for which the company had to pay. This sound distinction, however, is drawn between a life and accident policy, on the one hand, and a fire policy on the other, that while the latter is an obligation to pay just what the wrongdoer should pay, no more and no less, and is therefore really

within this class, and in both cases, the party making the payment is entitled to subrogation.⁷³

Other cases where the liability of a party making a payment is considered subsequent to that of some other party to the obligation, and in which, therefore, the former is entitled to subrogation, are cases of payment of more than his fair share by one of several joint debtors⁷⁴ or co-sureties.⁷⁵ In these cases, each party is considered, as against the others, as primarily liable for his own proportionate share of the obligation, and as subsequently liable for the shares of the others. And similarly, where a mortgage debtor assigns the mortgaged property to one who assumes the debt, the liability of the former, though originally primary, is considered as subsequent to that of the assignee, and the former is entitled to subrogation against the latter.⁷⁶

parallel with the principal obligation, the former call for stated sums, which may be more or less than the actual damage, and the obligation is therefore not parallel with that of the wrongdoer. *Quære*, whether the same reasoning should be applied in case of a valued fire or marine policy.

⁷³ Corporate stockholder: *Redington v. Cornwell*, 90 Cal. 49, 27 Pac. 40. Partners: *Harter v. Songer*, 138 Ind. 161, 37 N. E. 595; *Frow, Jacobs & Co.'s Estate*, 73 Pa. St. 459.

⁷⁴ *Wilks v. Vaughn* (Ark.), 83 S. W. 913; *Wheatley's Heirs v. Calhoun*, 12 Leigh (Va.), 264, 37 Am. Dec. 654. This, of course, does not include joint tort-feasors: *Gilbert v. Finch*, 173 N. Y. 455, 93 Am. St. Rep. 623, 66 N. E. 133.

⁷⁵ 4 Pom. Eq. Jur., § 1419; *Blanton v. Bostie*, 126 N. C. 418, 35 S. E. 1035; *Pace v. Pace's Admr.*, 95 Va. 792, 30 S. E. 361, 44 L. R. A. 459. See, also, *Elden v. Commonwealth*, 55 Pa. St. 485.

⁷⁶ See 3 Pom. Eq. Jur., §§ 1206, 1207; *Marsh v. Pike*, 10 Paige Ch. 595; *Willard v. Wood*, 1 App. Cas. (D. C.) 44. The case would seem to be contrary, however, where the assignee does *not* assume the mortgage: *Fuller v. John S. Davis Sons Co.*, 184 Ill. 505, 56 N. E. 791; affirming 84 Ill. App. 295. See, however, *McLure v. Melton*, 34 S. C. 377, 27 Am. St. Rep. 820, 13 S. E. 615, 13 L. R. A. 723. One who assumes, absolutely, an unsecured debt of another is likewise treated as the principal, and is not entitled to subrogation: *Darrow v. Summerhill*, 93 Tex. 92, 77 Am. St. Rep. 833, at 840, 53 S. W. 680.

It would seem that in the classes of cases above treated, it is sufficient that the payment be made in performance of a supposed legal duty, and in good faith, even though the party making the payment were not really bound.⁷⁷

The second class of parties entitled to subrogation consists of those who, while not legally bound to pay, yet might suffer loss if the obligation is not discharged, and so pay the debt in self-protection. In this class are included subsequent encumbrancers paying off a prior encumbrance,⁷⁸ and owners of property, or of equities or partial interests therein, paying off prior encumbrances.⁷⁹ It would seem here, as in the first class of cases, that one acting in good faith in making his payment, and under a reasonable belief that it is necessary to his protection, is entitled to subrogation,

⁷⁷ See *Nord-Deutscher Lloyd v. President etc. Ins. Co. of North America*, 110 Fed. 420, 49 C. C. A. 1, and cases cited.

⁷⁸ A mortgagee of a leasehold, upon payment of the rent, has been held subrogated to the lessor's right of re-entry: *Dunlap v. James*, 174 N. Y. 411, 67 N. E. 60; a *cestui que trust* under a trust deed, furnishing his trustee with money to use, and which actually is used, in paying a debt secured by a prior trust deed, is subrogated to the rights of the creditors under the latter: *Davison v. Gregory*, 132 N. C. 389, 43 S. E. 916. See, also, *Backer v. Pyne et al.*, 130 Ind. 288, 30 Am. St. Rep. 231, 30 N. E. 21.

⁷⁹ An owner of one part of a tract subject, with others, to a single mortgage: *Fort Jefferson Imp. Co. v. Dupoyster*, 112 Ky. 792, 23 Ky. Law Rep. 1501, 66 S. W. 1048 (no official report); *Hazle v. Bondy*, 173 Ill. 302, 50 N. E. 671; a life tenant or tenant in common: *Keller v. Fenske (Wis.)*, 101 N. W. 378; *Kinthead v. Ryan*, 64 N. J. Eq. 454, 53 Atl. 1053; a legatee, devisee, or heir of property subject to claims of creditors: *Cole v. Malcolm*, 66 N. Y. 363; *Pease v. Christman*, 158 Ind. 642, 64 N. E. 90; *Suydam v. Voorhees*, 58 N. J. Eq. 157, 43 Atl. 4; *Pease v. Egan*, 131 N. Y. 262, 30 N. E. 102; *Fullerton v. Bailey*, 17 Utah, 85, 53 Pac. 1020, citing 3 Pom. Eq. Jur., § 1419. The interest to be protected in such cases may be merely a contingent one: *Pease v. Egan*, *supra*.

Cases of the second class are considered in 3 Pom. Eq. Jur., §§ 1211-1213.

even though it turns out that he had no interest to protect.⁸⁰

Cases coming third in the classification suggested above are those in which payment is made by a stranger to the obligation, acting neither under compulsion nor for self-protection, but at the request of some party liable for the debt. In these cases, perhaps upon the ground of an implied promise, the party making the payment is usually held subrogated to the rights of him who is paid.⁸¹ Whether one not himself paying the debt, but loaning money to the debtor upon his personal security, but with the understanding that it is to be

⁸⁰ *Spaulding v. Harvey*, 129 Ind. 106, 28 Am. St. Rep. 176, 28 N. E. 323, 13 L. R. A. 619; *Milburn v. Phillips*, 143 Ind. 93, 52 Am. St. Rep. 403, 42 N. E. 461; *Taylor v. Girard Life Ins. Co.*, 1 App. Cas. (D. C.) 209. *Contra*, *Campbell v. Foster Home Assn.*, 163 Pa. St. 609, 43 Am. St. Rep. 818, 30 Atl. 222, 26 L. R. A. 117.

⁸¹ At request of the principal debtor: *Demeter v. Wilcox*, 115 Mo. 634, 37 Am. St. Rep. 422, 22 S. W. 613; *Clark v. Marlow*, 149 Ind. 41, 48 N. E. 359; *Warford v. Hankins*, 150 Ind. 489, 50 N. E. 468; *Straman v. Rehtine*, 58 Ohio St. 443, 51 N. E. 44; *MacGreal v. Taylor*, 167 U. S. 688, 17 Sup. Ct. 961, 42 L. ed. 326. At the request of another party to the obligation: *Martin v. Martin*, 164 Ill. 640, 56 Am. St. Rep. 219, 45 N. E. 1007; *Warford v. Hankins*, 150 Ind. 489, 50 N. E. 468, citing 3 Pom. Eq. Jur., § 1212.

A state of facts somewhat peculiar is presented when the debt of one man is paid with money or property of another, which is either taken from the latter wrongfully and without his consent or which, being in the possession of the debtor, is wrongfully applied by him in payment of his debt. Reasoning *a fortiori* from cases where the owner consents to the application of the money by the debtor, it would seem that subrogation should be allowed, especially as the element of compulsion is also present: *Colton v. Dacy*, 61 Fed. 481. See, however, *Wilkins v. Gibson*, 113 Ga. 31, 84 Am. St. Rep. 204, 38 S. E. 374; *Green v. Western Nat. Bank*, 86 Md. 279, 38 Atl. 131. In *Liles v. Rogers*, 113 N. C. 197, 37 Am. St. Rep. 627, 18 S. E. 104, it was held that when money, the proper application of which was secured by one set of sureties, and in which they therefore had an equity, was wrongfully used in discharge of another obligation, the former sureties were not subrogated to the rights of the creditor against the sureties on the latter obligation.

used in removing an encumbrance, is thereby entitled to claim the benefit of the encumbrance removed, is a matter of doubt.⁸²

Persons who attempt, in good faith, to purchase property at a void judicial sale, and whose purchase-money is used to satisfy valid claims against the property, while they act neither by compulsion nor request of the debtor,⁸³ nor for self-protection, are nevertheless warranted in their payment by public invitation, and are held subrogated to the rights of the parties receiving the money.⁸⁴ The same rule has been applied

⁸² A subsequent encumbrancer loaning money to pay off a prior encumbrance has been held subrogated to the latter: *Davison v. Gregory*, 132 N. C. 389, 43 S. E. 916; so, also, where the money was loaned by a stranger: *McWilliams v. Bones*, 84 Ga. 203, 10 S. E. 724. *Contra*, *Kleiman v. Geiselman*, 114 Mo. 437, 35 Am. St. Rep. 761, 21 S. W. 796. Other cases hold that the loan must have been made under an agreement that the lender should be subrogated: *Wilkins v. Gibson*, 113 Ga. 31, 84 Am. St. Rep. 204, 38 S. E. 374; *McCowan v. Brooks*, 113 Ga. 532, 39 S. E. 115. If the loan was made by one who took a security from the borrower, which, however, turns out to be invalid, subrogation is generally allowed: *Straman v. Rechtine*, 58 Ohio St. 443, 51 N. E. 44; *State Nat. Bank v. Vicroy*, 24 Ky. Law Rep. 892, 70 S. W. 183; *Amick v. Woodworth*, 58 Ohio St. 86, 50 N. E. 437; *Kalschener v. Upton*, 6 Dak. Ter. 449, 43 N. W. 816. So in the case of money loaned on void bonds: *Coffin v. Board of Commissioners*, 114 Fed. 518. So, where the money was paid to the debtor by a purchaser believing that he was getting title, and the title proved bad, the purchaser was held subrogated to encumbrances paid off with his money: *Joyce v. Dauntz*, 55 Ohio St. 538, 45 N. E. 900.

⁸³ A somewhat strained invitation from the debtor may perhaps be implied from the fact that he is allowing his property to be sold in that way. Probably a better ground for the equity in this class of cases is the invitation issued by the public, and favored by public policy, and the fact that such sales are matters of public necessity, and must be favored.

⁸⁴ Where one purchases land at a void administrator's sale, and his money is applied in payment of debts charged on the land, he is subrogated to the rights of the creditors: *Hunter v. Hunter*, 63 S. C. 78, 90 Am. St. Rep. 663, 41 S. E. 33; *Bond v. Montgomery*, 56 Ark. 563, 35 Am. St. Rep. 119, 20 S. W. 525; *Hull's Admr. v. Hull's Heirs*, 35 W. Va. 155, 29 Am. St. Rep. 800, 13 S. E. 49. In *Chambers v.*

in the case of a void sale by a mortgagee under a power.⁸⁵

A mere volunteer, it is generally agreed, is never entitled to subrogation. The term is used to designate one who, acting upon his own initiative, pays the debt of another without invitation, compulsion, or the necessity of self-protection.⁸⁶

Jones, 72 Ill. 275, it was held that such a party cannot actively enforce the creditor's rights against the land, but equity will refuse a decree quieting title against him, until the money is returned.

Where land is sold at a void tax sale to pay off a lien for betterment taxes, the purchaser is subrogated to the tax lien: *Reed v. Kalfsbeek*, 147 Ind. 148, 45 N. E. 476, 46 N. E. 466; *Gregory v. Bartlett*, 55 Ark. 30, 17 S. W. 344.

A purchaser at a void foreclosure sale is subrogated to the rights of the mortgagee: *Bailey v. Bailey*, 41 S. C. 337, 44 Am. St. Rep. 713, 19 S. E. 669; *Dutcher v. Hobby*, 86 Ga. 198, 22 Am. St. Rep. 444, 12 S. E. 356, 10 L. R. A. 472. The purchaser must show, however, that he bought believing that he was getting legal title, or that he bought to protect himself against a reasonably doubtful claim: *Griffin v. Griffin* (S. C.), 49 S. E. 561.

Purchaser at sheriff's sale on execution: *Bruschke v. Wright*, 166 Ill. 183, 57 Am. St. Rep. 125, 46 N. E. 813. See to the contrary, *Jewett v. Feldheiser*, 68 Ohio St. 523, 67 N. E. 1072.

⁸⁵ *Givins v. Carroll*, 40 S. C. 413, 42 Am. St. Rep. 889, 18 S. E. 1030; *Brewer v. Nash*, 16 R. I. 458, 27 Am. St. Rep. 749, 17 Atl. 857. See *Brown v. Rouse*, 125 Cal. 645, 58 Pac. 267, holding that subrogation will not be allowed where the mistake was one of law.

⁸⁶ The term is applied somewhat indiscriminately in the reports to almost anyone who applies for subrogation and is refused, no matter what the reason be, so that many statements of the courts are misleading. Among persons who have been considered volunteers, and not entitled to subrogation, are the following: A tax-collector entering taxes as "paid," and charging himself with them upon receipt of a bad check: *Mercantile Trust Co. v. Hart*, 76 Fed. 673, 22 C. C. A. 473, 35 L. R. A. 352, citing *In re Wallace's Estate*, 59 Pa. St. 401, and other cases; an agent for collection, remitting to his principal without having collected the money: *Bennett v. Chandler*, 199 Ill. 97, 64 N. E. 1052; a co-surety, bound for a definite amount, and paying a sum in excess of that amount, is, as to the excess, a volunteer: *Hanover Fire Ins. Co. v. Brown*, 77 Md. 64, 39 Am. St. Rep. 386, 25 Atl. 989.

But payment of a debt by a stranger should, it is submitted, operate as a discharge of the debt and a defense for the debtor only

§ 922. **Nature of the Right—Purely Equitable.**—The process of subrogation is analogous to the creation of a constructive trust, the creditor being compelled to hold his rights against the principal debtor, and his securities, in trust for the subrogee.⁸⁷ And even where the creditor held an obligation for which the subrogee was jointly bound, so that his payment constituted at law an absolute discharge by performance,⁸⁸ so that there was really nothing to hold in trust, equity, by a doctrine somewhat analogous to the principle of estoppel, treats the debt as being still in force, for the benefit of the subrogee.⁸⁹ Other courts, adhering more closely to the

where ratified by the latter: See § 912, note 10, *ante*. While the debtor should have a perfect right to repudiate such payment, and to refuse to indemnify the stranger, he should not, at the same time, be allowed to claim the benefit of the stranger's payment. The debt, therefore, should be still enforceable by the creditor, and as the creditor has already received its value, he should in all fairness hold the claim in trust for the stranger whose money has paid it. Accordingly, it has been held, in such cases, that the stranger or volunteer is entitled to reimbursement in case of subsequent ratification by the debtor, and otherwise to subrogation: *Neely v. Jones*, 16 W. Va. 625, 37 Am. Rep. 794; *Crumbish v. Central Imp. Co.*, 38 W. Va. 390, 45 Am. St. Rep. 872; *Kenan v. Holloway*, 16 Ala. 53, 50 Am. Dec. 162.

⁸⁷ See *Henderson-Achert Lithographic Co. v. John Shillito Co.*, 64 Ohio St. 236, 83 Am. St. Rep. 745, 60 N. E. 295; *Collum v. Emanuel*, 1 Ala. 33, 34 Am. Dec. 757; quotation from *Hart v. Railroad Co.*, note 72, *ante*.

⁸⁸ See note 86, *ante*, and § 912, note 10, *ante*.

⁸⁹ This is true of a joint judgment against the principal and surety, even though it is paid by the latter and released of record. The surety is still entitled to subrogation to the creditor's rights thereunder: *Neilson v. Fry*, 16 Ohio St. 552, 91 Am. Dec. 110; *Eddy v. Traver*, 6 Paige Ch. 521; *Hill v. Manser*, 11 Gratt. (Va.) 522; *Merryman v. State*, 5 Har. & J. (Md.) 423; *Richter v. Cummings*, 60 Pa. St. 441; *Turner v. Teague*, 73 Ala. 554.

A joint accommodation maker of a specialty obligation, upon paying it, is subrogated to the rights of the holder, and entitled to rank as a specialty creditor: *Lumpkin v. Mills*, 4 Ga. 343; *Powell's Exrs. v. White*, 11 Leigh (Va.), 309; *Davis v. Smith*, 5 Ga. 274,

rules of constructive trusts, refuse subrogation in cases of the latter sort, unless the payment is made in the form of a fictitious purchase by a third party, who will hold the claim in trust for the subrogee.⁹⁰ And the surety is allowed to bring a bill in such states to compel the creditor, upon payment of the debt, to make such an assignment.⁹¹

47 Am. Dec. 279; *Tinsley v. Oliver's Admr.*, 5 Munf. (Va.) 419; *Grider v. Payne*, 9 Dana (Ky.), 188; *Shultz v. Carter*, Speer Eq. (S. C.) 533; *Sublett v. McKinney*, 19 Tex. 438; *Tutt v. Thornton*, 57 Tex. 35.

Payment of mortgage notes by the maker when the debt has been assumed by an assignee of the mortgage, will not extinguish the notes so as to prevent subrogation of the mortgagor to the mortgagee's rights in the mortgaged property: *Nettleton v. Ramsay County Land Co.*, 54 Minn. 395, 40 Am. St. Rep. 342, 56 N. W. 128.

⁹⁰ Some of the later English cases until altered by statute (Mercantile Law Amendment Act, 19 & 20 Vict., c. 97, § 5), and one or two courts still, in this country, refuse to allow subrogation in the class of cases under discussion, because the debt being discharged, there is no longer a trust *res*. "As soon as a surety has paid the debt, an equity arises in his favor to have all of the securities which the creditor holds against the principal debtor transferred to him, and to avail himself of them as fully as the creditor could have done. The securities referred to do not include those which are extinguished by the payment of the debt; and unless the surety procures it to be assigned for his benefit to a third person, it is utterly extinguished, both at law and in equity, and he becomes a simple contract creditor": *Liles v. Rogers*, 113 N. C. 197, 37 Am. St. Rep. 627, 18 S. E. 104. See, as to a joint judgment, *Peebles v. Gay*, 115 N. C. 38, 44 Am. St. Rep. 429, 20 S. E. 173. See, however, *Davison v. Gregory*, 132 N. C. 389, 43 S. E. 916.

These courts refuse to adopt the expedient, generally adopted in this country, of considering that as existing which does not exist, and so securing a trust *res* for their constructive trust. And this expedient, while almost necessary to complete justice, and while somewhat analogous, perhaps, to the doctrine of estoppel, is, it must be admitted, a departure from any form of equitable machinery theretofore known.

⁹¹ *McDougald v. Dougherty*, 14 Ga. 674. In most states, however, the assignment is considered superfluous: *Dearborn v. Taylor*, 18 N. H. 153.

Subrogation is purely an equitable right,⁹² and being an equity, it is subject to the rules governing equities. The subrogee can work out his rights only through the creditor, and consequently his rights are limited by those of the creditor and he can enforce no rights that the creditor could not enforce.⁹³ This equity in the creditor's securities is cut off by an innocent purchase of the latter for value.⁹⁴ It is subject to prior equities, as well of the creditor as of third parties.⁹⁵ It will, however, prevail over equities arising subsequently, or over a purchaser with notice of it.⁹⁶ As between several parties to an obligation who are not ultimately

⁹² "Subrogation is an equitable right, and not a legal one, and can be enforced only in equity. It will not be enforced when it would be inequitable to do so, or where it would work injustice to others having equal equities": *Makeel v. Hotchkiss*, 190 Ill. 311, 83 Am. St. Rep. 131, 60 N. E. 524.

⁹³ *Pierson v. Catlin*, 18 Vt. 77; *Houston v. Branch Bank*, 25 Ala. 250; *Siegel v. Swartz*, 117 Fed. 13, 54 C. C. A. 399. Where a creditor, by accepting other security, has waived a vendor's lien, the surety cannot enforce such a lien by subrogation: *Bradford, Admr., v. Marvin*, 2 Fla. 463; *Miller v. Miller*, Phill. Eq. (N. C.) 85.

⁹⁴ A subsequent encumbrancer who satisfied a first mortgage and had it discharged of record will not be subrogated to the mortgage as against a judgment creditor of the mortgagor, who later redeems the land from the subsequent encumbrance, relying on the recorded discharge of the first mortgage: *Ahern v. Freeman*, 46 Minn. 156, 24 Am. St. Rep. 206, 48 N. W. 677. See, also, *First Nat. Bank of Seattle v. City Trust Safe Dep. & Surety Co., of Phila.*, 114 Fed. 529, 52 C. C. A. 313; *Orvis v. Newell*, 17 Conn. 97.

⁹⁵ Where a security has been given a creditor, for several claims, upon one of which is a personal surety, the surety is not, upon payment of his obligation, entitled to the security held by the creditor. Until all of the claims are paid in full, the equity of the surety is subject to that of the creditor: *Crump v. McMurtry*, 8 Mo. 408. For examples of other prior equities, see *Massie v. Mann*, 17 Iowa, 131; *Farmers' & Drovers' Bank v. Sherley*, 12 Bush (Ky.), 304; *Fishback v. Bodman & Co.*, 14 Bush (Ky.), 117; *Miller v. Stout*, 5 Del. Ch. 259. See, however, note 96, *post*.

⁹⁶ A creditor who holds a mortgage to secure a note signed by a principal and surety cannot, even with the consent of the principal,

liable for its payment, the equity of anyone paying the obligation is, of course, superior to that of parties whose liability is prior to his own, but subject to the equities of those whose liability is subsequent to his own.⁹⁷

Like any other person seeking equitable relief, the subrogee must come into court with clean hands, and one making a payment in order to defraud another will not be entitled to subrogation.⁹⁸ A payment, at the request of the debtor, under a contract void for usury will not support a claim for subrogation.⁹⁹ Laches may defeat the right of the subrogee, but this seems to be so only where a third party has thereby been led to act to his disadvantage.¹⁰⁰

§ 923. Conditions Upon Which Subrogation is Allowed—Payment—Other Security.—In the case of a suretyship obligation, a limited equity of the surety in the rights of the creditor against the principal debtor arises as soon as the obligation is assumed, without further condition, and if any of these rights are thereafter released, to the prejudice of the surety, he is released from his obliga-

hold the mortgage security for a debt of the principal subsequently incurred, as against the surety's right to subrogation upon payment of the first note: *City Nat. Bank v. Dudgeon*, 65 Ill. 11; *Pierce v. Garrett*, 65 Ill. App. 682; *Beaver v. Slanker*, 94 Ill. 175. See, also, *In re Rock Hill Cotton Factory Co.*, 68 S. C. 436, 47 S. E. 728. The surety's right of subrogation will also prevail over the right of an assignee of the security with notice of the surety's rights: *Albion State Bank v. Knickerbocker*, 125 Mich. 311, 7 Detroit Leg. N. 536, 84 N. W. 311.

⁹⁷ See § 912, note 3, *ante*.

⁹⁸ *Bleakley's Appeal*, 66 Pa. St. 187.

⁹⁹ *Tribble v. Nichols*, 53 Ark. 271, 22 Am. St. Rep. 190, 13 S. W. 796.

¹⁰⁰ *Mercantile Trust Co. v. Hart*, 76 Fed. 673, 22 C. C. A. 473, 35 L. R. A. 352; *Gring's Appeal*, 89 Pa. St. 336; *Mercantile Trust Co. v. Kanawha etc. Ry. Co.*, 58 Fed. 6, 7 C. C. A. 3; *Nelson v. Munch*, 28 Minn. 314, 9 N. W. 863.

tion.¹⁰¹ But the right of a subrogee to have the principal obligation and its securities actually applied for his own benefit does not arise until the creditor has been paid in full,¹⁰² or at least until the principal obligation has been discharged in some way.¹⁰³ And

101 *Collum v. Emanuel*, 1 Ala. 23, 34 Am. Dec. 757; *Nelson v. Munch*, 28 Minn. 314, 9 N. W. 863; *Smith v. Ferris*, 143 N. Y. 495, 39 N. E. 3; *Noble v. Murphy*, 91 Mich. 653, 30 Am. St. Rep. 507, 52 N. W. 148; *Mingus v. Daugherty*, 87 Iowa, 56, 43 Am. St. Rep. 354, 54 N. W. 66. This contingent equity enables the subrogee to follow the property into the hands of a purchaser, before payment, with notice, and to charge him as constructive trustee: *First Nat. Bank of Bellville v. Wheeler*, 12 Tex. Civ. App. 489, 33 S. W. 1093.

102 *Receiver of N. J. etc. Ry. v. Nortendyke*, 27 N. J. Eq. 658; a mere showing that a surety has made a part payment, for which he is entitled to indemnity from the principal, is insufficient: *Musgrave v. Dickson*, 172 Pa. St. 629, 51 Am. St. Rep. 765, 33 Atl. 705. See, also, *Hollingsworth v. Floyd*, 2 Har. & G. (Md.) 87; *Kyner v. Kyner*, 6 Watts (Pa.), 221; *Magee v. Legett*, 48 Miss. 139; *McConnell v. Beattie*, 34 Ark. 113. The estate of a bankrupt surety, which cannot pay the claim in full, cannot claim subrogation upon payment of a dividend: *Mercantile Nat. Bank of New York v. MacFarlane*, 71 Minn. 497, 70 Am. St. Rep. 352, 74 N. W. 287. A stockholder of a corporation who pays a percentage of the claim of a creditor, in discharge of his full liability, is not thereby subrogated to the creditor's rights against the corporation, where the creditor's claim is not yet entirely satisfied: *Sacramento Bank v. Pacific Bank*, 124 Cal. 147, 71 Am. St. Rep. 36, 56 Pac. 787. Of course, this rule is for the protection of the creditor, and where a part of the debt has already been paid by the principal, payment of the balance by a surety would entitle the latter to subrogation. And it would seem, that a party making a partial payment should be permitted to join the creditor and principal debtor in an action to compel the application of the securities to the satisfaction of the balance of the creditor's claim, and then toward the reimbursement of the surety: See *Phila. Underwriters v. Ft. Worth etc. Ry. Co.*, 31 Tex. Civ. App. 104, 71 S. W. 419; *Mobile Ins. Co. v. Columbia etc. R. R. Co.*, 41 S. C. 408, 44 Am. St. Rep. 725, 19 S. E. 858; *Home Mut. Ins. Co. v. Or. Ry. & Nav. Co.*, 20 Or. 569, 23 Am. St. Rep. 151, 26 Pac. 857; *Regan v. New York & New Eng. R. R. Co.*, 60 Conn. 124, 25 Am. St. Rep. 306, 22 Atl. 503.

103 If the principal obligation calls for the performance of an act, as the support of the promisee, of course the furnishing of the

where a collateral security was given, in the first place, to secure other debts, as well as that by which the subrogee was bound, these, too, must be satisfied before the subrogee may share in the collateral.¹⁰⁴ A payment made with the intention of conferring a gratuitous favor on the principal debtor will not give rise to subrogation, but the presumption is against such an intention as this.¹⁰⁵

It has been held that a party seeking subrogation must show that it is necessary to his protection, and that there is no other way in which he can get reimbursement, and that one who has other security is therefore not entitled to subrogation.¹⁰⁶ Other decisions recognize the latter part of the rule, but place it upon the ground that by an express contract for indemnity, the surety has waived subrogation.¹⁰⁷

support is sufficient: *Clark v. Marlow*, 149 Ind. 41, 48 N. E. 359; or if an obligation calling for a cash payment is discharged in some other way, with the consent of the creditor, as by the subrogee's giving a new note of his own, that is sufficient: *City of Keokuk v. Love*, 31 Iowa, 119; *Stedman v. Freedman*, 15 Ind. 86. See *Knighton v. Curry*, 62 Ala. 404. It is sufficient also if the discharge be by levy of execution on the surety's property: *Crawford v. Richeson*, 101 Ill. 351.

¹⁰⁴ See note 95, *ante*.

¹⁰⁵ *Farlee v. Field* (N. J. Eq.), 36 Atl. 945; *McArthur v. Martin*, 23 Minn. 74.

¹⁰⁶ *Pierson v. Borough of Haddonfield* (N. J. Eq.), 57 Atl. 471. It is immaterial, however, that the principal debtor has confessed judgment to the surety, for his indemnity: *Saint v. Ledyard*, 14 Ala. 244. And the fact that the principal is solvent will not defeat the right to subrogation; the subrogee is not required to show the insolvency of the principal: *Spaulding v. Harvey*, 129 Ind. 106, 23 Am. St. Rep. 176, 28 N. E. 323, 13 L. R. A. 619.

¹⁰⁷ *Cooper v. Jenkins*, 32 Beav. 337; *Cornwell's Appeal*, 7 Watts & S. (Pa.) 305. This does not apply, however, to securities received by the creditor, after the taking of the indemnity by the surety: *Lake v. Brutton*, 8 De Gex, M. & G. 440. And it has been held that the surety in such a case may elect whether to rely on his indemnity or his right of subrogation: *Flannagan v. Forrest*, 94 Ga.

It is not necessary that the subrogee, either at the time he first became bound or at the time of payment, should have known of the securities in the hands of the creditor.¹⁰⁸

§ 924. **Rights Upon Which Subrogation Operates.**—The subrogee is, in general, entitled to stand in the shoes of the creditor, and to enforce every right which the creditor himself could have enforced, so far as necessary to secure reimbursement or contribution.¹⁰⁹ This includes the right to enforce the principal obligation itself, even though it be discharged at law,¹¹⁰ and to claim all of the incidents of such obligation.¹¹¹ If it be a preferred specialty debt, the subrogee is usually held entitled to rank as a preferred creditor,¹¹² and it seems

685, 21 S. E. 712. See, also, *Huntington v. The Advance*, 72 Fed. 793, 19 C. C. A. 194.

108 A surety may be entitled to securities obtained by the creditor after the surety became bound, and of which he had no notice at the time of payment: *Scanland v. Settle*, Meigs (Tenn.), 169; *Scott v. Featherstone*, 5 La. Ann. 306; *Smith v. McLeod*, 3 Ired. Eq. (N. C.) 390.

109 This right, however, being a mere equity, is, as already explained, subject to prior equities, and a surety paying a debt could not be subrogated, for instance, to the creditor's right against another surety only subsequently liable: See § 912, note 3, *ante*. And as against a co-surety, the right is limited to the amount of contribution to which the subrogee is entitled: See § 918, note 49, *ante*. In all cases, of course, the subrogee can enforce the rights no further than is necessary for his own reimbursement. He cannot make a profit at the expense of the principal. And the principal can set off any debt due him from the subrogee: *Givins v. Carroll*, 40 S. C. 413, 42 Am. St. Rep. 889, 18 S. E. 1030.

110 See § 922, notes 89 and 90, *ante*.

111 This is very forcibly illustrated in *Pace v. Pace's Admr.*, 95 Va. 792, 30 S. E. 361, 44 L. R. A. 459, in which it is held that one surety, who has paid a debt in full, is subrogated to the creditor's right to prove the full claim against the bankrupt estate, and to recover dividends thereon, up to the amount of the contribution to which he is entitled.

112 See cases cited under § 922, note 89, *ante*.

that the period of limitation applicable to the obligation in the hands of the creditor should apply also to an action by the subrogee, although this is not generally recognized.¹¹³ So a provision in a note for liquidated damages, or attorney's fees in case of suit, may be taken advantage of by the subrogee.¹¹⁴

The subrogee may also claim any collateral securities in the hands of the creditor, whether they be in the form of a mortgage given by the principal debtor,¹¹⁵ or

113 Some cases hold that the right to subrogation is based on an implied promise, and is barred at the expiration of the period allowed for action of *assumpsit*: *Darrow v. Summerhill*, 93 Tex. 92, 77 Am. St. Rep. 833, 53 S. W. 680; *Junker v. Rush*, 136 Ill. 179, 26 N. E. 499, 11 L. R. A. 183. This seems to be upon the theory that the right to subrogation is merely incident to the right to reimbursement, and so should perish with the direct action for reimbursement. This view seems confusing, for in many cases of subrogation there can be no simple action for reimbursement at all. See § 916, notes 39 and 37, *ante*. It seems better, therefore, to recognize two distinct rights in the subrogee, one to sue for simple reimbursement, and the other to enforce the creditor's right, so far as necessary, and, in choosing the latter, to use the period of limitation applicable thereto: See *Hopewell v. Kerr*, 9 Ind. App. 11, 36 N. E. 48; *Hull v. Myers*, 90 Ga. 674, 16 S. E. 653; *Sublett v. McKinney*, 19 Tex. 433. Still other courts consider subrogation, not as a vested right, but as something to be procured in an action against the creditor, and class this, under the statute of limitations, as "an action not otherwise provided for." "Strictly speaking, there are two distinct causes of action in such cases, one consists of the facts that show the right of the plaintiff to be subrogated to the rights of the creditor, in the securities held by the latter, the other consists of those facts which show that the security may be enforced against the principal": *Zuellig v. Hemerlie*, 60 Ohio St. 27, 71 Am. St. Rep. 707, 53 N. E. 447. See, also, *Rittenhouse v. Levering*, 6 Watts & S. (Pa.) 190; *Joyce v. Joyce*, 1 Bush (Ky.), 474; *Guild v. McDaniels*, 43 Kan. 548, 23 Pac. 607.

It has been held that where the state is the creditor, the subrogee may claim the benefit of the state's exemption from the statute of limitations: *American Bonding Co. v. National Mechanics' Bank*, 97 Md. 598, 99 Am. St. Rep. 466, 55 Atl. 395.

114 *Beville v. Boyd*, 16 Tex. Civ. App. 491, 41 S. W. 670.

115 *Fullerton v. Bailey*, 17 Utah, 85, 53 Pac. 1020; *Freeburg v.*

a lien arising by operation of law, as in the case of a vendor's lien,¹¹⁶ landlord's lien,¹¹⁷ or mechanic's lien.¹¹⁸ He may also claim the advantage of any securities obtained by the creditor through his own efforts, as in the case of an attachment or judgment lien,¹¹⁹ or the right to finish an uncompleted suit.¹²⁰

Miscellaneous rights to which a subrogee has been held entitled are a charge by will on land;¹²¹ rights in an assignment for the benefit of creditors;¹²² the right to set aside a fraudulent conveyance;¹²³ right to follow trust property into the hands of a purchaser with notice;¹²⁴ the right of an administrator to reimbursement from land of the estate for debts paid;¹²⁵ the peculiar

Erksell, 123 Iowa, 464, 99 N. W. 118; *First Nat. Bank of Bellville v. Wheeler*, 12 Tex. Civ. App. 489, 33 S. W. 1093; *Givins v. Carroll*, 40 S. C. 413, 42 Am. Rep. 889, 18 S. E. 1030; *Dutcher v. Hobby*, 86 Ga. 198, 22 Am. St. Rep. 444, 10 L. R. A. 472, 12 S. E. 356; *Nettleton v. Ramsay County Land Co.*, 54 Minn. 395, 40 Am. St. Rep. 342, 56 N. W. 128; *Brewer v. Nash*, 16 R. I. 458, 27 Am. St. Rep. 749, 17 Atl. 857; *Bailey v. Bailey*, 41 S. C. 337, 44 Am. St. Rep. 713, 19 S. E. 669, 728; *Noble v. Murphy*, 91 Mich. 653, 30 Am. St. Rep. 507, 52 N. W. 148.

¹¹⁶ *Darrow v. Summerhill*, 93 Tex. 92, 77 Am. St. Rep. 833, 53 S. W. 680. But this is not the prevailing rule in the United States, as respects a vendor's lien *after* conveyance: See 3 Pom. Eq. Jur., § 1254.

¹¹⁷ *Mingus v. Daugherty*, 87 Iowa, 56, 43 Am. St. Rep. 354, 54 N. W. 66; *Hall v. Hoxsey*, 84 Ill. 616.

¹¹⁸ *Fitch v. Stallings*, 5 Colo. App. 106, 38 Pac. 393.

¹¹⁹ *Brewer v. Franklin Mills*, 42 N. H. 292; *Peebles v. Gay*, 115 N. C. 38, 44 Am. St. Rep. 429, 20 S. E. 173; *Bruschke v. Wright*, 166 Ill. 183, 57 Am. St. Rep. 125, 46 N. E. 813.

¹²⁰ *Brought v. Griffith*, 16 Iowa, 26. *Contra*, *Griffin v. Thomas*, 21 Ga. 198.

¹²¹ *Hunter v. Hunter*, 63 S. C. 78, 90 Am. St. Rep. 663, 41 S. E. 33.

¹²² *Ogburn v. Wilson*, 93 N. C. 115.

¹²³ *Wilks v. Vaughan* (Ark.), 83 S. W. 913.

¹²⁴ *Rice v. Rice*, 108 Ill. 199.

¹²⁵ *Taylor v. Taylor*, 8 B. Mon. (Ky.) 419, 48 Am. Dec. 400.

priority of a purchase-money mortgage;¹²⁶ money reserved by order of court as security for a fiduciary's performance of duty;¹²⁷ the machinery of collection, including the right to bring a creditor's bill.¹²⁸

A subrogee may be entitled to enforce the creditor's rights against third persons, other than the principal debtor.¹²⁹ It extends to rights against a third party liable *ex delicto*, as a purchaser of converted goods,¹³⁰ or one participating in or assisting a breach of trust or other wrong on the part of the subrogee's principal,¹³¹ and in short, against any co-surety, to the extent of proper contribution, and against any other surety or person in the position of a surety, whose liability is prior to that of the subrogee, or from whom the subrogee would be entitled to indemnity.¹³² A joint debtor paying a debt in full is also entitled to the benefit of the creditor's claim against all of the other joint debtors.¹³³

Where the state is the creditor, as a rule, no difference is made in the right of subrogation, and the subrogee is entitled to enforce any lien or preference belonging to the state.¹³⁴ This doctrine is limited, how-

¹²⁶ *Demeter v. Wilcox*, 115 Mo. 634, 37 Am. St. Rep. 422, 22 S. W. 613.

¹²⁷ *In re Rock Hill Cotton Factory Co.*, 68 S. C. 436, 47 S. E. 728.

¹²⁸ *Hull's Admr. v. Hull's Heirs*, 35 W. Va. 155, 29 Am. St. Rep. 800, 13 S. E. 49.

¹²⁹ "The equities of sureties to subrogation extend not only to the rights of the creditor as against the principal, but to all rights of the creditor respecting the debt which the sureties pay": *City of Keokuk v. Love*, 31 Iowa, 119.

¹³⁰ *Skiff v. Cross*, 21 Iowa, 459.

¹³¹ *American Bonding Co. v. National Mechanics' Bank*, 97 Md. 598, 99 Am. St. Rep. 466, 55 Atl. 395; *Brown v. Fidelity & D. Co.* (Tex.), 80 S. W. 593.

¹³² See § 912, note 3, *ante*.

¹³³ *Wilks v. Vaughan* (Ark.), 83 S. W. 913.

¹³⁴ Sureties on official bonds are entitled to subrogation to the rights of the state in enforcing reimbursement from a principal,

ever, by some cases, which, apparently, upon grounds of public policy, deny to the individual the peculiar machinery of collection reserved to the state.¹³⁵

§ 925. Subrogation of Creditor or Co-surety to Securities Given to Indemnify a Surety.—Where securities have been given by the principal to a surety, to indemnify him against loss, the creditor is said to be subrogated to the rights of the surety in the securities.¹³⁶ Similarly a co-surety who has paid part or all of the debt is entitled to the advantage of the securities, equally with the one to whom they were given.¹³⁷ These cases depend upon the principle that the securities have been dedicated, as it were, to the payment of the debt, and so a construc-

or contribution from a co-surety: *Cummings v. May*, 110 Ala. 479, 20 South. 307; *Boone Co. Bank v. Byrum*, 68 Ark. 71, 56 S. W. 532; *Orem v. Wrightson*, 51 Md. 34, 34 Am. Rep. 286; *Bunting v. Ricks*, 22 N. C. 130, 32 Am. Dec. 699.

Payment of the taxes of another by a proper party may subrogate the party making the payment to the lien of the state: *Taylor v. Wilcox*, 167 Mass. 572, 46 N. E. 115; *Dunsmuir v. Port Angeles Gas etc. Co.*, 30 Wash. 586, 71 Pac. 9.

In *United States v. Ryder*, 110 U. S. 729, 4 Sup. Ct. 196, 28 L. ed. 308, it was held that a surety on a bail bond cannot become subrogated to the rights of the United States, and cannot even recover reimbursement from the principal. That a subrogee cannot sue in the name of the United States, nor enjoy its peculiar privileges of procedure, see *United States v. Preston*, 4 Wash. C. C. 446, Fed. Cas. No. 16,087.

¹³⁵ *Griffing v. Pintard*, 25 Miss. 173; *Hinchman v. Morris*, 29 W. Va. 673, 2 S. E. 863; *Irby v. Livingston*, 81 Ga. 281, 6 S. E. 591.

¹³⁶ 4 Pom. Eq. Jur., § 1419, and cases cited; *Albion State Bank v. Knickerbocker*, 7 Detroit Leg. N. 536, 125 Mich. 311, 84 N. W. 311; *Blanton v. Bostie*, 126 N. C. 418, 35 S. E. 1035; *Henderson-Achert Lith. Co. v. John Shillito Co.*, 64 Ohio St. 236, 83 Am. St. Rep. 745, 60 N. E. 295; *First Nat. Bank of Bellville v. Wheeler*, 12 Tex. Civ. App. 489, 33 S. W. 1093. The creditor is not entitled to the securities given to indemnify the surety by a stranger to the obligation, however: *Henderson-Achert Lith. Co. v. John Shillito Co.*, *supra*.

¹³⁷ *Scribner v. Adams*, 73 Me. 541.

tive trust for that purpose will be enforced.¹³⁸ They belong to a different field of equity jurisdiction, therefore, from cases of subrogation in general.¹³⁹

¹³⁸ Henderson-Achert Lith. Co. v. John Shillito Co., 64 Ohio St. 236, 83 Am. St. Rep. 745, 60 N. E. 295.

¹³⁹ See § 911, *ante*.

CHAPTER XLVIII.

SUITS FOR AN ACCOUNTING.

ANALYSIS.

- § 926. Origin of the equitable jurisdiction.
- § 927. Jurisdiction, when exercised—Inadequacy of legal remedies.
- § 928. Plea of stated account a bar.
- § 929. Mutual accounts.
- § 930. Complicated accounts.
- § 931. Fiduciary relations.
- § 932. Same; principal and agent.
- § 933. Same; profit sharers, part owners, tenants in common and joint tenants.
- § 934. When a discovery is necessary.
- § 935. Accounting as incidental to other relief.

§ 926. Origin of the Equitable Jurisdiction.—Historically considered, suits for accounting had their origin in the ancient common-law action of account-render. This action was so narrow in its operation, so difficult of application, so dilatory and so expensive, that in England it seems not to have been brought more than a dozen times within the last two centuries, and in this country, save in the states where it has been developed and perfected by statute, it has long since given place to other and more adequate remedies.¹ This common-law ac-

¹ 4 Pom. Eq. Jur., § 1420. The procedure was to give a preliminary judgment, *quod computet* against the defendant, and then a second judgment that he pay the plaintiff the balance found to be due: 3 Black. Com. 163; Neal v. Keel's Exrs., 20 Ky. (4 T. B. Mon.) 162; McMurray v. Rawson, 3 Hill (N. Y.), 59. But if the balance was in the defendant's favor, the plaintiff could not be compelled to pay it: 1 Spence, Eq. Jur., 650. Moreover the auditors before whom the account was taken had no power to examine the parties on oath, and all disputes over items had to be settled by as many issues in court: Jeremy, Eq. Jur., 504.

tion "lay only in cases where there was either a privity in deed, as against a bailiff or receiver appointed by the party, or a privity in law, *ex provisione legis*, as against guardians in socage."² By the law-merchant, also, the action could be brought by one merchant as such against another merchant as such, charging the defendant as *receptor denariorum*.³

"This action of account-render was the only means which the common law furnished of obtaining a settlement of an account, except that assumpsit might be brought for a determinate balance.⁴ But if the balance was disputed, it was necessary for the jury to investigate the items one by one, a task which was practically impossible."⁵ "From the narrow scope and technical rules of this action, the inability of common-law courts to obtain a discovery from the defendant on his oath, the difficulty met with in cases of mutual and complicated accounts, and the impossibility of otherwise doing complete justice, it is easy to understand why the action of account-render fell into disuse, and a jurisdiction in equity to entertain suits for an accounting grew up."⁶

§ 927. Jurisdiction, When Exercised—Inadequacy of Legal Remedies.—"The jurisdiction exists, therefore, and is well

2 4 Pom. Eq. Jur., § 1420, note 1; Co. Litt. 90b. The ancient action of account-render was strictly confined to these parties, but statute later extended it to their executors and administrators: 3 & 4 Anne, c. 16; 13 Edw. I., c. 23; 31 Edw. III., c. 11.

3 Co. Litt. 172a; 4 Pom. Eq. Jur., § 1420, note 1.

4 3 Black. Com. 162; *Fanning v. Chadwick*, 20 Mass. 420, 15 Am. Dec. 233.

5 4 Pom. Eq. Jur., § 1420, note 1.

6 4 Pom. Eq. Jur., § 1420; *Neal v. Keel's Exrs.*, 20 Ky. (4 T. B. Mon.) 162; 1 Spence, Eq. Jur., 649; Mitford, Eq. Pl., 120, 123; Bac. Abr., tit. Accompt. "A useless form of action, into which it is wholly unnecessary for us to undertake the difficult, if not impracticable task of infusing life and vigor": *Stewart v. Kerr*, 1 Morris (Iowa), 318.

established; but the question arises, since there is a similar jurisdiction at law, When may a suit in equity for an accounting be brought? This question, of course, does not arise in those cases where an accounting is decreed as an incident to other equitable relief; nor should it arise where the subject-matter is an equitable interest or estate, for here the jurisdiction should be exercised as a necessary consequence, without regard to legal remedies.⁷ It is not in every matter of account cognizable at law that the equitable jurisdiction will be exercised, the general rule being that a proper case is presented when the remedies at law are inadequate.”⁸

§ 928. Plea of Stated Account a Bar.—“A plea of stated account obviously constitutes a bar to a suit in equity for an accounting, since in that case the remedy at law is entirely adequate;⁹ but of course a stated account may be opened for fraud or error.”¹⁰

§ 929. Mutual Accounts.—The legal remedies are held to be inadequate and a suit in equity for an accounting

⁷ 4 Pom. Eq. Jur., § 1420; see 1 Pom. Eq. Jur., §§ 218, 219.

⁸ 4 Pom. Eq. Jur., § 1420; see 1 Pom. Eq. Jur., §§ 176, 178; *Holland v. Hallahan* (Pa.), 60 Atl. 735; *Sprigg v. Commonwealth etc. Co.*, 206 Pa. St. 548, 56 Atl. 33; *Dargin v. Hewlitt*, 115 Ala. 510, 22 South. 128; *Dabbs v. Nugent*, 11 Jur., N. S., 943; *Coffman v. Sangston*, 21 Gratt. 263. But equity will not necessarily take jurisdiction even then: *Fluker v. Taylor*, 3 Drew. 183. The plaintiff must come with clean hands: *Nightingale v. Milwaukee Furniture Co.*, 71 Fed. 234. When the transactions have become obscure and entangled by delay and time, equity will not readily take jurisdiction: *Rayner v. Pearsall*, 3 Johns. Ch. (N. Y.) 578; *Harrison v. Gibson*, 23 Gratt. (Va.) 212.

⁹ *Weed v. Small*, 7 Paige, 573; *Bullock v. Boyd*, 2 Edw. Ch. 293; *Dial's Exrs. v. Rogers*, 4 Desaus. Eq. 175; *Craig v. McKinney*, 72 Ill. 305; *Wahl v. Barnum*, 116 N. Y. 87, 22 N. E. 280, 5 L. R. A. 623; *Hoyt v. McLaughlin*, 52 Wis. 280, 8 N. W. 889.

¹⁰ 4 Pom. Eq. Jur., § 1421, at note 5; *Slee v. Bloom*, 5 Johns. Ch. (N. Y.) 366; 20 Johns. 669; *Barrow v. Rhinelander*, 1 Johns. Ch. (N. Y.) 550.

will lie in cases where there are mutual accounts between the plaintiff and the defendant. Such accounts exist in cases where each of the two parties has received and paid on account of the other.¹¹ Such an account does not exist, however, in a case where one of the parties has merely received and paid out on account of the other,¹² and indeed a mutual account never exists where the account is all on one side.¹³ Neither is there a mutual account where there is an account on one side and matters of set-off on the other,¹⁴ nor even where there are accounts on both sides which have no connection with each other.¹⁵

§ 930. **Complicated Accounts.**—Although courts of equity have refused to entertain jurisdiction of suits for accounting in cases where the items were merely

¹¹ 4 Pom. Eq. Jur., § 1421, at note 1; so defined in *Phillips v. Phillips*, 9 Hare, 471.

¹² *Phillips v. Phillips*, 9 Hare, 471; *Chaffee v. Conway* (Wis.), 103 N. W. 269 (mutual claims between mortgagor and mortgagee).

¹³ *Pleasants v. Glasscock*, 1 Smedes & M. Ch. (Miss.) 17; *Taylor v. Tompkins*, 2 Heisk. (Tenn.) 89; *Pearl v. Nashville*, 10 Yerg. (Tenn.) 179; *Sprigg v. Commonwealth Title etc. Co.*, 206 Pa. St. 548, 56 Atl. 33.

¹⁴ *Dinwiddie v. Bailey*, 6 Ves. 136; *Wells v. Cooper*, cited 6 Ves. 139; *Allison v. Herring*, 9 Sim. 583; *Phillips v. Phillips*, 9 Hare, 471; *Padwick v. Hurst*, 18 Beav. 575; *Fluker v. Taylor*, 3 Drew, 183; *Northeastern Ry. v. Martin*, 2 Phill. Ch. 758; *Kennington v. Houghton*, 2 Younge & C. Ch. 620, 627; *Porter v. Spencer*, 2 Johns. Ch. 169; *Smith v. Marks*, 2 Rand. 449; *Hickman v. Stout*, 2 Leigh, 6; *McLin v. McNamara*, 2 Dev. & B. Eq. 82; *Hay v. Marshall*, 3 Humph. 623; *Wilson v. Mallett*, 4 Sandf. 112; *Durant v. Einstein*, 5 Rob. (N. Y.) 423; *Salter v. Ham*, 31 N. Y. 321; *Walker v. Cheever*, 35 N. H. 339; *Gloninger v. Hazard*, 42 Pa. St. 389; *Passyunk Bldg. Assn.'s Appeal*, 83 Pa. St. 441; *Carter v. Bailey*, 64 Me. 458, 18 Am. Rep. 273; *Dickinson v. Lewis*, 34 Ala. 638; *Avery v. Ware*, 58 Ala. 475; *Garner v. Reis*, 25 Minn. 475; *Haywood v. Hutchins*, 65 N. C. 574. See *State v. Churchill*, 48 Ark. 426, 3 S. W. 352, 880.

¹⁵ For in such a case, the defendant's account is a mere matter of set-off which can readily be ascertained and adjusted in a court of law: *Haywood v. Hutchins*, 65 N. C. 574.

very numerous,¹⁶ they have interposed in many others for the sole reason that the accounts involved were extremely complicated, and even where such accounts were not mutual but were all on one side.¹⁷ It is important then to determine, if possible, what degree of complication will warrant the interposition of equity. The rule became established in England that equity would step in whenever the account was so complicated that a court of law would be incompetent to examine it at *nisi prius* with the necessary accuracy,¹⁸ but under the present practice in England, as in New York,¹⁹ matters

16 *Barry v. Stevens*, 31 Beav. 258; *American Spirits Mfg. Co. v. Easton*, 120 Fed. 440. Mere intricacy of accounts held insufficient to give equity jurisdiction: *Galusha v. Wendt*, 114 Iowa, 597, 87 N. W. 512.

17 4 Pom. Eq. Jur., § 1421; *O'Connor v. Spaight*, 1 Schoales & L. 305; *O'Mahoney v. Dickson*, 2 Schoales & L. 400; *Bliss v. Smith*, 34 Beav. 508; *South Eastern Ry. v. Brogden*, 3 Maen. & G. 8; *Kennington v. Houghton*, 2 Younge & C. Ch. 620, 627; *Frietas v. Dos Santos*, 1 Younge & J. 574; *Taff Vale Ry. v. Nixon*, 1 H. L. Cas. 110; *Mitchell v. Great Works etc. Co.*, 2 Story, 648, Fed. Cas. No. 9662; *Governor v. McEwen*, 5 Humph. 241; *Watt v. Conger*, 13 Smedes & M. 412; *Kirkman v. Vanlier*, 7 Ala. 217; *Printup v. Mitchell*, 17 Ga. 558, 63 Am. Dec. 258; *Wilson v. Riddle*, 48 Ga. 609; *Lafever v. Billmyer*, 5 W. Va. 33; *Blood v. Blood*, 110 Mass. 545; *Frue v. Loring*, 120 Mass. 507; *Ward v. Peck*, 114 Mass. 121; *Farmers' etc. Bank v. Polk*, 1 Del. Ch. 167; *Trapnall v. Hill*, 31 Ark. 345; *Nesbit v. St. Patrick's Church*, 9 N. J. Eq. 76; *Seymour v. Long Dock Co.*, 20 N. J. Eq. 396; *Fenno v. Primrose*, 116 Fed. 49; *McMullen Lumber Co. v. Strother (C. C. A.)*, 136 Fed. 295. *Contra*, *Norwich etc. R. R. v. Storey*, 17 Conn. 364.

18 4 Pom. Eq. Jur., § 1421, note 2; *O'Connor v. Spaight*, 1 Schoales & L. 305, per Lord Redesdale; *South Eastern Ry. v. Brogden*, 3 Maen. & G. 8; *Kennington v. Houghton*, 2 Younge & C. Ch. 620, 627; *Taff Vale Ry. v. Nixon*, 1 H. L. Cas. 110; *Foley v. Hill*, 2 H. L. Cas. 28, 46; *Buel v. Selz*, 5 Ill. App. 116; *Hallett v. Cumston*, 110 Mass. 32; *City of Covington v. Limerick*, 19 Ky. Law Rep. 330, 40 S. W. 254; *Inhabitants of Crawford Township v. Watters*, 61 N. J. Eq. 284, 43 Atl. 316; *Black v. Boyd*, 50 Ohio St. 46, 33 N. E. 207.

19 *Marvin v. Brooks*, 94 N. Y. 71; *Uhlman v. New York Life Ins. Co.*, 109 N. Y. 421, 433, 4 Am. St. Rep. 482, 17 N. E. 363, per Peckham, J., quoting the last sentence of the paragraph, and holding

of account may be referred to officers or referees, so that this rule can now hardly be followed in those jurisdictions. Various tests have been laid down, but the facts of each particular case should govern the court in the exercise of its discretion, and the true principle would seem to be that whenever it is doubtful whether adequate relief could be obtained at law, equity should entertain jurisdiction.²⁰

§ 931. Fiduciary Relations.—"Where a fiduciary relation exists between the parties, and a duty rests upon the defendant to render an account" to the plaintiff, equity will entertain jurisdiction of a suit for an accounting, although the account is neither mutual nor complicated. The most common of such cases are those involving trustees,²¹ guardians,²² executors and admin-

that the exercise of the jurisdiction, because of a complication of accounts, is largely a matter of discretion, and will be refused when it will be of very great inconvenience and possible oppression to the defendant.

²⁰ 4 Pom. Eq. Jur., § 1421, note 2; *Foley v. Hill*, 2 H. L. Cas. 28; *Douler v. Campbell*, 178 Pa. St. 23, 35 Atl. 857; *Warner v. McMullin*, 131 Pa. St. 370, 18 Atl. 1056, 25 Wkly. Not. Cas. 157. In the important case of *Pierce v. Equitable Life Assur. Soc.*, 145 Mass. 56, 12 N. E. 858, the defendant company was compelled to account to the holder of a "tontine" policy, to show that it had complied with its promise "equitably to apportion" to the plaintiff his share in the accumulations made through the operation of the tontine provisions in his policy. Relief was granted on the ground of the extreme complexity of the accounts. But in *Uhlman v. N. Y. L. Ins. Co.*, *supra*, note 19, relief was refused on similar facts. For instances of accounts not so complicated as to require equitable interference, see *Randolph v. Tandy*, 98 Fed. 939; *Beggs v. Edison El. L. & I. Co.*, 96 Ala. 295, 11 South. 381; *Ely v. Crane*, 37 N. J. Eq. 157.

²¹ *Crothers v. Lee*, 29 Ala. 337; *Colonial etc. Co. v. Hutchinson etc. Co.*, 44 Fed. 219; *Taylor v. Benham*, 5 How. (U. S.) 233, 12 L. ed. 130; see 3 Pom. Eq. Jur., §§ 1058, 1063.

²² *Davis v. Davis*, 1 Del. Ch. 256; *State v. Quinn*, 74 N. C. 370. See 3 Pom. Eq. Jur., § 1097.

istrators,²³ partners,²⁴ agents²⁵ and co-tenants.²⁶ Although it is the trust relation involved in such cases which gives jurisdiction to a court of equity, the relation need not be the strictly technical relation of trustee and *cestui que trust*, a quasi trust relation being sufficient.²⁷

§ 932. Same; Principal and Agent.—The principal difficulty is in determining in what cases equity will take jurisdiction of an accounting between principal and agent. “The mere relation of principal and agent, without more,—the relation not being really fiduciary in its nature, and no obstacle intervening to a recovery at law,—is insufficient to enable a principal to maintain the action against his agent.²⁸ But where the relation

²³ *Kirkwood v. Mitchell*, 1 Del. Ch. 130; the jurisdiction of equity to compel guardians, executors and administrators to account, is governed to a great extent in the United States by the powers given to courts of probate: See 1 Pom. Eq. Jur., §§ 77, 78, 347-350; 3 Pom. Eq. Jur., § 1154, and notes.

²⁴ *Garr v. Redman*, 6 Cal. 575; *Ferry v. Henry*, 4 Pick. (Mass.) 74; *Hallett v. Cumston*, 110 Mass. 32.

²⁵ *Davis v. Wilson* (N. J.), 56 Atl. 704; *Halsted v. Rabb*, 8 Port. (Ala.) 63; *Webb v. Fuller*, 77 Me. 568, 1 Atl. 737 (quoting Pom. Eq. Jur., § 1421, note); *Thornton v. Thornton*, 31 Gratt. (Va.) 212; *Parsons on Partnership*, 508.

²⁶ *McLellan v. Osborne*, 51 Me. 118; *Hodges v. Pingree*, 10 Gray (Mass.), 14; *Ferry v. Henry*, 4 Pick. (Mass.) 74; *Early v. Friend*, 16 Gratt. (Va.) 21, 78 Am. Dec. 649; *Dyckman v. Valiente*, 42 N. Y. 549.

²⁷ *Western Union Tel. Co. v. American Bell Tel. Co.*, 125 Fed. 342, 60 C. C. A. 220. As to suits against directors of corporations for accounting, see 2 Pom. Eq. Jur., § 881; 3 Pom. Eq. Jur., § 1092.

²⁸ 4 Pom. Eq. Jur., § 1421, note 3; *King v. Rossett*, 2 Younge & J. 33; *Navulshaw v. Brownrigg*, 1 Sim., N. S., 573, 2 De Gex, M. & G. 441; *Hemings v. Pugh*, 4 Giff. 456; *Moxon v. Bright*, L. R. 4 Ch. 292; *Crothers v. Lee*, 29 Ala. 337 (attorney and client); *Knotts v. Tarver*, 8 Ala. 743 (agency for a single transaction); *Coquillard v. Suydam*, 8 Blackf. 24 (ditto); *Blakely v. Biscoe*, 1 Hemp. 114, Fed. Cas. No. 18,239; *Powers v. Cray*, 7 Ga. 206 (attorney and client); *Long v. Cochran*, 9 Phila. 267; *County of Clinton v. Shuster*, 82 Ill. 137 (not

is such that a confidence is reposed by the principal in his agent, and the matters for which an accounting is sought are peculiarly within the knowledge of the latter, equity will assume jurisdiction."²⁹

"While the rules are thus settled in favor of a principal, it does not follow that the reverse is true, and that an agent may come into equity for an accounting against his principal, since generally there is no trust or confidence reposed in the latter, and no duty on his part to account.³⁰ But there are cases where an agent may maintain the action against his principal."³¹

§ 933. Same; Profit Sharers, Part Owners, Tenants in Common and Joint Tenants.—The relation between partners

maintainable against a treasurer and assessor, as everything was a matter of record); *Kuhl v. Pierce County*, 44 Neb. 584, 62 N. W. 1066 (ditto).

²⁹ 4 Pom. Eq. Jur., § 1421, note 3; *Makepeace v. Rogers*, 11 Jur., N. S., 215; *Hemings v. Pugh*, 4 Giff. 456; *Mackenzie v. Johnston*, 4 Madd. 373; *Moxon v. Bright*, L. R. 4 Ch. 292; *Southampton Dock Co. v. Southampton etc. Board*, L. R. 11 Eq. 254; *Thornton v. Thornton*, 31 Gratt. 212; *Taylor v. Thompson*, 2 Heisk. 89; *Kerr v. Camden Steamboat Co.*, Cheves Eq. 189; *Halsted v. Rabb*, 8 Port. 63; *Hale v. Hale*, 4 Humph. 183; *Marvin v. Brooks*, 94 N. Y. 71; *Webb v. Fuller*, 77 Me. 568, 1 Atl. 737; *Vilwig v. B. & O. R. R. Co.*, 79 Va. 449; *Rippe v. Stogdill*, 61 Wis. 38, 20 N. W. 645; *Decell v. Hazelhurst etc. Co.*, 83 Miss. 346, 35 South. 761 (to compel agent to account for misappropriated funds).

³⁰ 4 Pom. Eq. Jur., § 1421, note 3; *Padwick v. Stanley*, 9 Hare, 627; *Smith v. Levaux*, 2 De Gex, J. & S. 11. An agent cannot have an accounting against his principal in order to recover commissions: *Skilton v. Payne*, 42 N. Y. Supp. 111, 18 Misc. Rep. 332.

³¹ "As for example, where his salary depends on the profits made by his employer"; 4 Pom. Eq. Jur., § 1421, note 3; *Harrington v. Churchward*, 9 Jur., N. S., 576; *Shepard v. Brown*, 4 Giff. 208; *Buel v. Selz*, 5 Ill. App. 116; *Sowles v. Martin*, 76 Vt. 180, 56 Atl. 579 (where agent in such a case was treated as a co-tenant); *Channon v. Stewart*, 103 Ill. 541; *Alpaugh v. Wood*, 45 N. J. Eq. 153, 16 Atl. 676. See, also, *Fenno v. Primrose*, 116 Fed. 49 (matters in dispute very numerous).

Equitable Remedies, Vol. II—96

necessarily gives rise to the right of an accounting in equity, "and persons, although not technically partners, who are to receive a certain share of the profits of an undertaking, may likewise have an accounting."³² "The foregoing rules are applicable, for similar reasons, to part owners³³ and to tenants in common and joint tenants taking more than their share of the rents and profits."³⁴ "At the common law, no action of account for taking rents and profits lay against a joint tenant or tenant in common by another, unless the defendant was constituted bailiff;³⁵ but this was remedied by statute,³⁶ and the action could be brought against the defendant as bailiff for recovering more than his share or proportion. This statute has been substan-

³² 4 Pom. Eq. Jur., § 1421, note 3; Bentley v. Harris, 10 R. I. 434, 14 Am. Rep. 695; Garr v. Redman, 6 Cal. 574; Ferry v. Henry, 4 Pick. 75; Hallett v. Cumston, 110 Mass. 32; see King v. Barnes, 109 N. Y. 267, 16 N. E. 332; Darrah v. Boyce, 62 Mich. 480, 29 N. W. 102; Pratt v. Tuttle, 136 Mass. 233; Harvey v. Sellers, 115 Fed. 757; Marston v. Gould, 69 N. Y. 221; Parker v. John Pullman Co., 36 App. Div. 208, 56 N. Y. Supp. 734.

³³ Strelly v. Winson, 1 Vern. 297; McLellan v. Osborne, 51 Me. 118; Dyckman v. Valiente, 42 N. Y. 549, 563; Shirley v. Goodnough, 15 Or. 642, 16 Pac. 871.

³⁴ 4 Pom. Eq. Jur., § 1421, note 3; Sowles v. Martin, 76 Vt. 180, 56 Atl. 979; Armijo v. Neher (N. Mex.), 72 Pac. 12; Early v. Friend, 16 Gratt. 21, 78 Am. Dec. 649; Leach v. Beattie, 33 Vt. 195; Wiswell v. Wilkins, 4 Vt. 137 (more than two tenants concerned); Darden v. Cowper, 7 Jones, 210, 75 Am. Dec. 461; Wright v. Wright, 59 How. Pr. 176; Hodges v. Pingree, 10 Gray, 14; Blood v. Blood, 110 Mass. 545; Gates v. Frazer, 9 Ill. App. 624 (no legal liability on one joint owner to account to another with respect to the use of a patent right, but the action maintained under an agreement); Dodson v. Hays, 29 W. Va. 577, 2 S. E. 415; Almy v. Daniels, 15 R. I. 312, 4 Atl. 753, 10 Atl. 654. "An action by one tenant in common against another in exclusive possession to recover a share of rents, profits, and issues, amounting in the aggregate to a certain sum, cannot be maintained in equity": 4 Pom. Eq. Jur., § 1421, note 3; Pico v. Columbet, 12 Cal. 414, 73 Am. Dec. 550.

³⁵ Co. Litt. 200b.

³⁶ 4 Anne, c. 16, § 27.

tially re-enacted in many of the American states, but the equity jurisdiction exists notwithstanding.”³⁷

§ 934. **When a Discovery is Necessary.**—“The rule is sometimes laid down by text-writers and judges, that where accounts are all on one side, but a discovery is necessary, a proper case is presented for equitable interference, but such a rule seems to be only applicable to cases partaking of a fiduciary character,”³⁸ or to cases wherein the accounts are extremely complicated.³⁹

§ 935. **Accounting as Incidental to Other Relief.**—“The remedy of accounting is in most instances a necessary incident and part of the relief granted in suits brought by those beneficially interested, against trustees, either express or implied, and persons standing in fiduciary relations, such as administrators, executors, guardians, directors, and the like. The equitable jurisdiction is also practically exclusive in proceedings for an account and settlement of partnership affairs, including suits for an accounting and settlement of the firm affairs between the co-partners themselves; suits for a settle-

³⁷ “*Leach v. Beattie*, 33 Vt. 195; *Wright v. Wright*, 59 How. Pr. 176. An accounting is often an incident to a suit for partition between joint tenants and tenants in common: See *Goodenow v. Ewer*, 16 Cal. 461, 76 Am. Dec. 540; *Jones v. Massey*, 14 S. C. 292; *Tyner v. Fenner*, 4 Lea, 469; *Scott v. Guernsey*, 48 N. Y. 106. The relation of banker and customer is not fiduciary in its character, and unless there are other circumstances, there can be no accounting between them in equity: *Foley v. Hill*, 2 H. L. Cas. 28”; 4 Pom. Eq. Jur., § 1421, note 3.

³⁸ 4 Pom. Eq. Jur., § 1421, note 3; *Walker v. Spencer*, 13 Jones & S. 71; *Halsted v. Rabb*, 8 Port. 63; *Taylor v. Tompkins*, 2 Heisk. 89; *Colonial etc. Mortgage Co. v. Hutchinson Mortgage Co.*, 44 Fed. 219.

³⁹ If one were entitled to an accounting in every case where he would be entitled to a discovery, every demand would come within the purview of equity: *Foley v. Hill*, 2 H. L. Cas. 28. See, further, as to this subject, 1 Pom. Eq. Jur., § 223 et seq.

ment of the firm affairs between the survivors and the executors or administrators of the deceased, when a partner has died; and suits to settle the affairs of an insolvent firm, and to adjust the demands of the firm creditors and the creditors of the individual partners. The equitable jurisdiction over partnerships is a necessary outgrowth of the jurisdiction over accounting, and the remedies of dissolution, injunction, and receivership are incidents necessary to a final and complete relief."⁴⁰

⁴⁰ 4 Pom. Eq. Jur., § 1421. As to partnership accounting, see next chapter.

CHAPTER XLIX.

PARTNERSHIP BILLS.

ANALYSIS.

- § 936. In general—Suits for dissolution.
- § 937. Suits for accounting—Legal remedy.
- § 938. Same—Dissolution necessary.
- § 939. Exceptions—Accounting without dissolution.
- § 940. Who may bring suit.
- § 941. Grounds for refusal of relief.
- § 942. Statute of limitations—Laches.
- § 943. Disposition of partnership property upon dissolution.
- § 944. Rights of creditors in partnership property.
- § 945. Rights of creditors in separate property.

§ 936. In General—Suits for Dissolution.—Courts of equity have a wide jurisdiction over partnership affairs, arising out of the peculiar relationship between the parties. Thus, where there is a demand existing in favor of one partnership against another, both having a common member, there can be no remedy at law, for one party cannot be both a plaintiff and a defendant. In equity, however, this can be adjusted and justice done.¹ The commonest bills are those for a dissolution and for an accounting. A bill of the former class generally includes the latter; but the converse is not true. A partnership may be dissolved in several ways without the interposition of the courts; such matters, however, are beyond the scope of this work, and for their discussion, the reader must be referred to treatises on the law of partnership. There are cases in which the aid of a court of equity is needed in order to work a dissolution; and when the facts show the necessity and

¹ Code v. Reynolds, 18 N. Y. 74; 1 Pom. Eq. Jur., §§ 175, note, 189.

right of one party, equity will take jurisdiction. Thus, where one partner has abused his trust, as, for example, by misappropriating funds, or by excluding the other, equity may interfere to decree dissolution.² And such relief may be proper when it is impracticable to go on with the business,³ and "when the disagreements and disputes between the parties have become so violent and lasting as to prevent any beneficial results from the continuance of the connection."⁴ Where a person has been induced, by fraudulent representations, to enter into a partnership, equity may rescind the contract at his instance, and put an end to it *ab initio*.⁵ Upon determining that dissolution is proper, the court will proceed to administer the affairs of the partnership, ordering an accounting, the payment of debts, the disposition and distribution of the property, and a settlement of balances. To accomplish these ends, a receiver may be appointed;⁶ and an injunction may be awarded to prevent the partners or others from interfering in the settlement of the partnership affairs.⁷

² Holladay v. Elliott, 3 Or. 340; Sutro v. Wagner, 23 N. J. Eq. 388; Werner v. Leisen, 31 Wis. 169 (exclusion of partner); Kennedy v. Kennedy, 3 Dana, 239; Cottle v. Leitch, 35 Cal. 434 (fraud; false entries in books).

³ Sebastian v. Booneville Academy Co., 22 Ky. Law Rep. 186, 56 S. W. 810.

⁴ Singer v. Heller, 40 Wis. 544. See, also, Whalen v. Stephens, 193 Ill. 121, 61 N. E. 921; Gerard v. Gateau, 84 Ill. 121, 25 Am. Rep. 438; Blake v. Dorgan, 1 G. Greene (Iowa), 537; Whitman v. Robinson, 21 Md. 30. For an enumeration of the grounds for dissolution, see 69 Am. St. Rep. 420, ff., note.

⁵ Oteri v. Scalzo, 145 U. S. 578, 12 Sup. Ct. 895, 36 L. ed. 824.

⁶ For a full discussion of the appointment of receivers in such cases, see *ante*, volume I, chapter III.

⁷ It is a general principle that an injunction will be freely granted, when it will serve a useful purpose, in aid of another equitable remedy: Pom. Eq. Jur., § 1345. A few cases are given by way of illustration of the application of the principle to partnership bills: See Wilkinson v. Tilden, 9 Fed. 683; Fletcher v. Vandusen, 52 Iowa, 448, 3 N. W. 488; Zimmerman v. Chambers, 79 Wis. 20, 47 N. W. 947.

§ 937. **Suits for Accounting—Legal Remedy.**—When a dissolution is sought or has occurred, equity has jurisdiction of an action to compel an accounting of the partnership assets.⁸ There was originally a remedy by an action of account at law, but the superior advantages of the equity procedure have caused the legal action to fall into disuse.⁹ The main superiority of the equitable remedy lies in the fact that the complainant may compel a discovery of the items of account.¹⁰ The legal action was not maintainable when there were more than two partners; consequently, in such a case, the remedy in equity is, and always has been, exclusive.¹¹

§ 938. **Same—Dissolution Necessary.**—In general, a court of equity will not interfere to order an accounting, unless a dissolution has occurred or is sought by the bill.¹² The reasons given for this rule are that in-

⁸ In general, see *Reese v. McCurdy*, 121 Ala. 425, 25 South. 918; *Tarabino v. Nicoli*, 5 Colo. App. 345, 39 Pac. 362; *Miller v. Rapp*, 7 Ind. App. 89, 34 N. E. 125; *Kisling v. Barrett* (Ind. App.), 71 N. E. 507; *Lamb v. Rowan*, 83 Miss. 45, 35 South. 427, 690; *Zimmerman v. Chambers*, 79 Wis. 20, 47 N. W. 947.

⁹ *Spear v. Newell*, 2 Paine C. C. 267, Fed. Cas. No. 13,224 ("at common law joint partners may sustain this action against each other when the proceeds of the partnership business have been received by one of the partners, who refuses to account for the same"); *Lee v. Abrams*, 12 Ill. 111 ("In England it seems to have fallen almost entirely into disuse, and although expressly authorized by our statute, a case is seldom to be met with in our courts"); *Neal v. Keel*, 4 T. B. Mon. 162; *Hunt v. Gorden*, 52 Miss. 194; *Jessup v. Cook*, 6 N. J. L. 434; *Appleby v. Brown*, 24 N. Y. 143.

¹⁰ "However, it is found by experience that the most ready and effectual way to settle these matters of account is by bill in equity, where a discovery may be had on the complainant's oath, without relying merely on the evidence which the plaintiff may be able to produce; wherefore actions of account to compel a man to bring in and settle accounts are now very seldom used"; 3 Bl. Com. 162, 163.

¹¹ *Foster v. Ives*, 53 Vt. 458; *Stevens v. Coburn*, 71 Vt. 261, 44 Atl. 354.

¹² *Davis v. Davis*, 60 Miss. 615 (not as to an isolated portion of

terference will tend to strife, which will lead to a dissolution, and that it is impracticable to take an account of the affairs of a going concern because they are constantly changing.¹³ It is not the province of equity "to enter into a consideration of mere partnership squabbles";¹⁴ such matters should be settled by the members themselves. Where there has been a dissolution, however, or that relief is sought by the bill, these reasons do not apply, and it becomes the duty of equity to see that justice is done to all parties. It seems to be the rule that no demand for an accounting need be made before applying to the court.¹⁵

the business, where course of business has been to treat all as a whole); *Lord v. Hull*, 178 N. Y. 9, 102 Am. St. Rep. 484, 70 N. E. 69. See, also, *Nisbet v. Nash*, 52 Cal. 540 ("If on a re-trial the district court shall find that the partnership has been dissolved, the decree must be for an accounting. If the court shall find that it has not been dissolved, it will become its duty to determine whether or not plaintiff is entitled to a decree of dissolution; and if it shall find that plaintiff is entitled to such decree, the decree should also provide for an accounting"). To the effect that in general there cannot be an accounting of particular items alone, see *Baird v. Baird*, 1 Dev. & B. Eq. 524, 31 Am. Dec. 399.

13 The reasons for the rule are well summarized in the recent case of *Lord v. Hull*, 178 N. Y. 9, 102 Am. St. Rep. 484, 70 N. E. 69. In that case, Vann, J., said: "If the members of a firm cannot agree as to the method of conducting their business, the court will not attempt to conduct it for them. Aside from the inconvenience of constant interference, as litigation is apt to breed hard feelings, easy appeals to the courts to settle the differences of a going concern would tend to do away with mutual forbearance, foment discord, and lead to dissolution. It is to the interest of the law of partnership that frequent resort to the courts by copartners should not be encouraged, and they should realize that, as a rule, they must settle their own differences, or go out of business." Upon the second reason given in the text, the learned judge quoted 2 *Bates on Partnership*, § 910, to the effect that "the fluctuations of a continuing business will make an accounting which is correct to-day incorrect to-morrow."

14 *Wray v. Hutchinson*, 2 Mylne & K. 235, 238.

15 *Hanna v. McLaughlin*, 158 Ind. 292, 63 N. E. 475; *McClung v. Capehart*, 24 Minn. 17 (no demand necessary prior to bringing suit

§ 939. **Exceptions—Accounting Without Dissolution.**—To the rule stated in the preceding section there are several well-defined exceptions. Bearing in mind the reasons given for the rule, it will be seen that cases may arise in which neither will apply. A leading text-writer mentions three classes of cases as exceptions to the general rule: “(1) Where one partner has sought to withhold from his co-partner the profits arising from some secret transaction; (2) where the partnership is for a term of years still unexpired, and one partner has sought to exclude or expel his co-partner, or drive him to a dissolution; (3) where the partnership has proved a failure, and the partners are too numerous to be made parties to the action, and a limited account will result in justice to them all.”¹⁶ To this classification must be added the class of cases (4) where the agreement of partnership contemplates settlements of distinct transactions, or at stated times.¹⁷

§ 940. **Who may Bring Suit.**—The general rule is that anyone who has a direct interest in the partnership settlement, and who is not otherwise represented, may

for accounting); *Wright v. Ross*, 30 Tex. Civ. App. 207, 70 S. W. 234 (no notice necessary in partnership at will).

¹⁶ *Lindley on Partnership*, quoted by Vann, J., in *Lord v. Hull*, 178 N. Y. 9, 102 Am. St. Rep. 484, 70 N. E. 69.

Cases of exclusion.—*Richards v. Davies*, 2 Russ. & M. 347 (exclusion from means of ascertaining the state of the partnership affairs); *Sanger v. French*, 157 N. Y. 213, 51 N. E. 979 (“an accounting may be had without dissolution, to enable him to obtain his share of the partnership profits, from the benefits of which he has been excluded”).

Cases of numerous partners.—*Wallworth v. Holt*, 4 Mylne & C. 619; *Richardson v. Hastings*, 7 Beav. 323.

¹⁷ *Miller v. Freeman*, 111 Ga. 654, 36 S. E. 961, 51 L. R. A. 504 (*dictum*—“the contract did not in terms provide for an annual accounting and settlement between the parties, but this was evidently their intention”).

sue for an accounting. Clearly, a partner comes within this class, and his right is admitted.¹⁸ An assignment of the interest of a partner merely transfers his rights after an accounting and settlement; and consequently the assignee is entitled to compel an accounting.¹⁹ For the same reason, a purchaser of one partner's share on execution may maintain such a bill.²⁰ The administrator of a deceased partner is the proper party to sue on behalf of the estate.²¹ The heirs are not allowed to sue, even though a conspiracy between the administrator and the surviving partner is alleged.²² They have a sufficient remedy by application to the probate court to remove the delinquent administrator; and if any loss has occurred by virtue of his negligence or wrongful acts, redress may be had in a suit upon his official bond. Employees who, in payment for services, are entitled to a definite share of the profits, may also maintain the bill.²³ Without such accounting, it would be difficult, if not impossible, to establish the claim.

§ 941. Grounds for Refusal of Relief.—“It is no doubt the general rule, when a partnership is alleged and admitted, to order an account as a matter of course, un-

¹⁸ *Sharp v. Hibbins*, 42 N. J. Eq. 543, 9 Atl. 113; and see cases cited in preceding paragraphs.

¹⁹ *Mathewson v. Clarke*, 6 How. 122, 12 L. ed. 370; *Miller v. Brigham*, 50 Cal. 615.

²⁰ *Farley v. Moog*, 79 Ala. 148, 58 Am. Rep. 585.

²¹ *Tate v. Tate*, 35 Ark. 289; *Freeman v. Freeman*, 136 Mass. 260.

²² *Tate v. Tate*, 35 Ark. 289; *Hutton v. Laws*, 55 Iowa, 710, 8 N. W. 642; *Rosenzweig v. Thompson*, 66 Md. 593, 8 Atl. 659.

²³ *Cornell v. Redrow*, 60 N. J. Eq. 251, 47 Atl. 56 (“Suing at law before ascertaining whether there were profits, and to what amount, his claim would lack the elements of certainty which the law courts require. An accounting of all the transactions of the business would be necessary, and this the mode of procedure in those courts is unfitted to accomplish”); *Bentley v. Harris*, 10 R. I. 434, 14 Am. Rep. 695. See, also, *Hallett v. Cumston*, 110 Mass. 32; *McCabe v. Sinclair* (N. J. Eq.), 58 Atl. 412.

less the right of the complainant to relief is barred by lapse of time. But where it manifestly appears from the proof, that the party asking the interposition of the court has no real cause of complaint, and that no good purpose or end can be accomplished by directing an account to be taken, it ought not to be ordered."²⁴ Accordingly, it has been held that no account will be allowed when, for any reason, it is unnecessary; as where complainant has access to the books, which contain no complications.²⁵ No relief will be given to an absconding partner who seeks an accounting, the denial being based upon the maxim that he who comes into equity must come with clean hands.²⁶

§ 942. Statute of Limitations—Laches.—It is the general rule that bills for partnership accounting are subject to the operation of the statute of limitations.²⁷ Where such actions are not expressly mentioned in the statute, the courts will act by analogy to the legal rule, and impose upon the remedy they afford the same limitation. In many states, the statute is made applicable to proceedings in equity; and in such jurisdictions the

²⁴ *McKaig v. Hebb*, 42 Md. 227. For a statement of the requisites of the bill, see *Dugger v. Tutwiler*, 129 Ala. 258, 30 South. 91. Compare *Harvey v. Pennypacker*, 4 Del. Ch. 445, 486.

²⁵ *McKay v. Joy*, 70 Cal. 581, 11 Pac. 832 (surviving partner denied an accounting, because he can take possession and wind up the affairs). See *Demarest v. Rutan*, 40 N. J. Eq. 356, 2 Atl. 647, where an account was allowed, but complainant was compelled to pay costs.

²⁶ *Hart v. Deitrich* (Neb.), 96 N. W. 144.

²⁷ *Knox v. Gye*, L. R. 5 H. L. 656; *Taylor v. Taylor*, 28 L. T. Rep. 189; and see cases cited in the following notes. But see *contra*, *Rencher v. Anderson*, 95 N. C. 208, holding that "partners stand in relation of trustee to each other, and something must be done to render that relation adversary, and put the statute in motion." It is generally held that the partner's interest is a mere chose in action.

courts apply the provisions directly. While there is little dissent from the proposition that the statute will be applied, there is a great diversity as to when the period begins. In cases where the partnership is dissolved by death, the general rule is that the statute begins to run from the death.²⁸ The courts adopting this rule hold that the surviving partner is not a trustee in the technical sense, and that accordingly the rules as to trustees do not apply. Upon the same theory, the time, in cases of dissolution otherwise, should run from the date of dissolution.²⁹ In some jurisdictions it is held that the statute does not begin to run until the debts due to and by the partnership are paid;³⁰ in some, that

²⁸ *Knox v. Gye*, L. R. 5 H. L. 656; *Taylor v. Taylor*, 28 L. T. Rep. 189; *Bonney v. Stoughton*, 122 Ill. 536, 13 N. E. 833; *King v. Wartelle*, 14 La. Ann. 740.

²⁹ *Richardson v. Gregory*, 126 Ill. 166, 18 N. E. 777; *Richards v. Grinnell* (Iowa), 18 N. W. 668 ("the statute cannot commence to run until the partnership is dissolved, or until a sufficient time has elapsed after a demand for an accounting and settlement"); *Petty v. Haas*, 122 Iowa, 257, 98 N. W. 104; *Currier v. Studley*, 159 Mass. 17, 33 N. E. 709 ("in the absence of an express contract in regard to the matter, or of conduct of the parties which works an extension of the time for bringing a suit, the statute begins to run at the date of the dissolution"); *King v. Wartelle*, 14 La. Ann. 740; *Gray v. Kerr*, 46 Ohio St. 652, 23 N. E. 136; *McKelvy's Appeal*, 72 Pa. St. 409; *Allen v. Woonsocket Co.*, 11 R. I. 288. But see *Riddle v. Whitehill*, 135 U. S. 621, 10 Sup. Ct. 924, 34 L. ed. 282, where it is held that where the affairs of a partnership are being wound up in due course, without antagonism between the parties, and assets are being realized and debts extinguished, and no settlement has been made between the partners, the statute of limitations has not begun to run, and that when the right of action accrues for an accounting so as to put the statute of limitation in motion, "depends upon the circumstances of each case, and cannot be held, as matter of law, to arise at the date of the dissolution, or to be carried back by relation to that date." See, also, *Thomas v. Hurst*, 73 Fed. 372 (bill against surviving partner); *Gilmore v. Ham*, 142 N. Y. 1, 40 Am. St. Rep. 554, 36 N. E. 826; *Gray v. Green*, 142 N. Y. 316, 40 Am. St. Rep. 596, 37 N. E. 124.

³⁰ "After the dissolution of a partnership, the statute of limita-

it runs from the date of the last item on the books;³¹ and in others that it runs from the time the partnership accounts are settled and the balance is struck.³² As in all equitable actions, the doctrine of laches is applicable; but mere delay short of the statutory period of limitation will not bar relief.³³ "Where the partners fail to keep books, or fail to keep such books as will show the status of the firm's affairs, and they postpone a settlement till one of them dies, or till important witnesses die, or till necessary records are lost or destroyed, equity will not interfere to relieve such misfortune."³⁴

tions would not begin to run in favor of one partner and against another until the partnership affairs, as to debtors and creditors of the partnership, had been wound up and settled, or, at least, a sufficient time had elapsed since the dissolution to raise the presumption that such was the fact": *Prentice v. Elliott*, 72 Ga. 154. See, also, *Logan v. Dixon*, 73 Wis. 533, 41 N. W. 713 (claim against estate of deceased partner); *Miller v. Harris*, 9 Baxt. 101.

31 "Such a suit is barred in equity, unless commenced within six years of the last item of debit or credit, or other like partnership transaction, on account between the partners, from which a promise on the part of the defendant may be implied to pay any balance that might be due by him on final settlement": *Wells v. Brown*, 83 Ala. 161, 3 South. 439. See, also, *Dugger v. Tutwiler*, 129 Ala. 258, 30 South. 91; *McClung v. Capehart*, 24 Minn. 17; *Todd v. Rafferty's Admrs.*, 30 N. J. Eq. 254 (suit by surviving partner against administrator of deceased partner). In *Bluntzer v. Hirsch*, 32 Tex. Civ. App. 585, 75 S. W. 326, it is said: "The cause of action in such case is considered as having accrued on a cessation of the dealings in which they were interested together."

32 *Hendy v. March*, 75 Cal. 566, 17 Pac. 702. See, also, *McDonald v. Holmes*, 22 Or. 212, 29 Pac. 735 (statute begins to run against right to contribution at such time).

33 For cases applying the doctrine of laches, see *Robertson v. Burrell*, 110 Cal. 568, 42 Pac. 1086; *Lawrence v. Rokes*, 61 Me. 38; *Stout v. Seabrook's Exrs.*, 30 N. J. Eq. 187; *Appeal of Andriessen*, 123 Pa. St. 303, 16 Atl. 840, 23 Wkly. Not. Cas. 46; *King v. White*, 63 Vt. 158, 25 Am. St. Rep. 752, 21 Atl. 535. For a discussion of the subject of laches, see *ante*, volume I, chapter I.

34 *Garnett v. Wills*, 24 Ky. Law Rep. 617, 69 S. W. 695.

§ 943. **Disposition of Partnership Property Upon Dissolution.**—Upon a partnership accounting, the firm debts must be paid before any distribution can be made to the individual partners or to the representatives of their interests. To pay such debts, all of the partnership property, both real and personal, may, if necessary, be sold.³⁵ After the debts are paid and the rights of the parties are determined, the property should be distributed. In England it is held that all of the property must be sold, and the proceeds divided, unless there is some agreement to the contrary.³⁶ In America this rule applies to personal property, but there is a conflict of authority as to the realty. The better rule seems to be that a partner may compel a partition of the realty, if that is possible.³⁷ There is also a conflict between the English and the American rules as to succession to partnership property. In England, both real and personal property descend as personalty.³⁸ In America, the property descends according to its true nature, the personalty going as personalty and the realty as realty.

³⁵ *Shanks v. Klein*, 104 U. S. 18, 26 L. ed. 635; *Barton v. Lovejoy*, 56 Minn. 380, 45 Am. St. Rep. 482, 57 N. W. 935.

³⁶ *Wild v. Milne*, 26 Beav. 504; *Featherstonhaugh v. Fenwick*, 17 Ves. 298; *Burdon v. Barkus*, 4 De Gex, F. & J. 42.

³⁷ *Gray v. Palmer*, 9 Cal. 116; *Hughes v. Devlin*, 23 Cal. 501; *Jackson v. Deese*, 35 Ga. 84; *Patterson v. Blake*, 12 Ind. 436; *Aiken v. Ogilvie*, 12 La. Ann. 353; *Danvers v. Dorrity*, 14 Abb. Pr. 206; *Greene v. Graham*, 5 Ohio, 264; *Pierce v. Covert*, 39 Wis. 252. For American cases supporting the English rule, see *Lyman v. Lyman*, 2 Paine C. C. 11, Fed. Cas. No. 8628; *Sigourney v. Munn*, 7 Conn. 11; *Dickinson v. Dickinson*, 29 Conn. 600; *Godfrey v. White*, 43 Mich. 171, 5 N. W. 243; *Pierce v. Trigg*, 10 Leigh, 406. See, also *Rovelsky v. Brown*, 92 Ala. 522, 25 Am. St. Rep. 83, 9 South. 182 ("so far as the partners and their creditors are concerned, real estate belonging to the partnership is in equity treated as mere personalty"); *Lang's Heirs v. Waring*, 17 Ala. 145.

³⁸ *Darby v. Darby*, 3 Drew. 495; *Phillips v. Phillips*, 1 Mylne & K. 649; *Broom v. Broom*, 3 Mylne & K. 443.

This prevails even in some jurisdictions where the right to a partition is denied.³⁹

§ 944. **Rights of Creditors in Partnership Property.**—The interest of an individual partner may be reached by his creditor, and may be sold by him under execution.⁴⁰ In levying, the sheriff may take actual, manual possession of the property; and he may do the same under an attachment before judgment.⁴¹ By the weight of authority, the partner whose interest is levied upon, or any of the other partners, may come into equity to have an account taken before sale;⁴² and to render this right effectual, the sale will be enjoined. And it has been held that a partner against whom an execution issues is entitled to an account even after the sale is made.⁴³ It must be borne in mind, however, that it is only the individual's interest that is sold. A "party coming in the right of the partner comes into nothing more than an interest in the partnership, which cannot be tangible, cannot be made available, or be delivered, but under an account between the partnership and the partner; and it is an item in the account that enough must be left for the partnership debts."⁴⁴ Each partner has an

³⁹ *Darrow v. Calkins*, 154 N. Y. 503, 61 Am. St. Rep. 637, 49 N. E. 61, 48 L. R. A. 299; *Shearer v. Shearer*, 98 Mass. 107. See cases collected in note to *Goldthwaite v. Janney*, 102 Ala. 431, 48 Am. St. Rep. 56, 15 South. 560, 28 L. R. A. 161.

⁴⁰ *Smith v. Orser*, 42 N. Y. 132; *Newhall v. Buckingham*, 14 Ill. 405; *Hubbard v. Curtis*, 8 Iowa, 1, 74 Am. Dec. 283; *Sanders v. Young*, 31 Miss. 111.

⁴¹ *Smith v. Orser*, 42 N. Y. 132.

⁴² *Crane v. Morrison*, 4 Saw. 138, Fed. Cas. No. 3355; *Newhall v. Buckingham*, 14 Ill. 405; *Hubbard v. Curtis*, 8 Iowa, 1, 74 Am. Dec. 283, and cases cited; *Sanders v. Young*, 31 Miss. 111; *Place v. Sweetzer*, 16 Ohio, 142. *Contra*, *Moody v. A. & H. Payne*, 2 Johns. Ch. 548.

⁴³ *Habershon v. Blurton*, 1 De Gex & S. 121.

⁴⁴ *Taylor v. Fields*, 4 Ves. 396. See, also, to the effect that partnership creditors are entitled to first payment, *Osborn v. McBride*,

equity to have the partnership debts paid before the property is distributed.

§ 945. **Rights of Creditors in Separate Property.**—It was settled at an early day in England that when equity has jurisdiction over firm and separate funds “the joint creditors shall be first paid out of the partnership or joint estate, and the separate creditors out of the separate estate of each partner, and if there be a surplus of the joint estate, beside what will pay the joint creditors, the same shall be applied to pay the separate creditors; and if there be, on the other hand, a surplus of the separate estate beyond what will satisfy the separate creditors, it shall go to supply any deficiency that may remain as to the joint creditors.”⁴⁵ This is an application of the equitable doctrine of marshaling assets; and so far as it gives priority to separate creditors, it has been justly criticised as an arbitrary rule. It must be remembered that it is not a legal rule; for at law a firm creditor may by attachment or execution acquire a priority.⁴⁶ While the doctrine is primarily equitable, it is most frequently applied in bankruptcy and in proceedings for winding up the estate of a deceased partner. In its general scope, the rule is supported by the weight of authority in the United States.⁴⁷

3 Saw. 590, Fed. Cas. No. 10,593; *Crooker v. Crooker*, 46 Me. 250; *Thompson v. Frist*, 15 Md. 24; *Doner v. Stauffer*, 1 Penr. & W. 198. See, also, *Farwell v. Huston*, 151 Ill. 239, 42 Am. St. Rep. 237, 37 N. E. 864; *Himmelreich v. Shaffer*, 182 Pa. St. 201, 61 Am. St. Rep. 698, 37 Atl 1007.

⁴⁵ Ex parte Cook, 2 P. Wms. 500.

⁴⁶ *Meech v. Allen*, 17 N. Y. 300, 72 Am. Dec. 465; *Stevens v. Perry*, 113 Mass. 380.

⁴⁷ *Pott v. Schmucker*, 84 Md. 535, 57 Am. St. Rep. 415, 36 Atl. 592, 35 L. R. A. 392; *Hundley v. Farris*, 103 Mo. 78, 23 Am. St. Rep. 863, 15 S. W. 312, 12 L. R. A. 254; *Thayer v. Humphrey*, 91 Wis. 276, 51 Am. St. Rep. 887, 64 N. W. 1007, 30 L. R. A. 549. See, also,

An exception allows firm creditors to prove against the separate property when there is no joint property, and there is no living, solvent partner within the jurisdiction.⁴⁸ In probate proceedings upon the estate of a deceased partner, the same rule of distribution applies.⁴⁹ In America, it is generally held that the remedy against the surviving partner must be exhausted before firm creditors can resort to the estate of the deceased partner;⁵⁰ in England, however, this is not necessary.⁵¹

cases collected in note, 43 Am. St. Rep., pp. 367, 368. The rule is recognized in the bankruptcy act of 1898, § 5, f: "The net proceeds of the partnership property shall be appropriated to the payment of the partnership debts, and the net proceeds of the individual estate of each partner to the payment of his individual debts. Should any surplus remain of the property of any partner after paying his individual debts, such surplus shall be added to the partnership assets and be applied to the payment of the partnership debts. Should any surplus of the partnership property remain after paying the partnership debts, such surplus shall be added to the assets of the individual partners in the proportion of their respective interests in the partnership."

⁴⁸ Ex parte Peake, 2 Rose, 54; Ex parte Hill, 2 Bos. & P. (N. R.) 191, note (a); In re Downing, 1 Dill. 33, Fed. Cas. No. 4044; In re Knight, 8 N. B. R. 436, 2 Biss. 518, Fed. Cas. No. 7880; Brock v. Bateman, 25 Ohio St. 609; Thayer v. Humphrey, 91 Wis. 276, 51 Am. St. Rep. 887, 64 N. W. 1007, 30 L. R. A. 549.

⁴⁹ Gray v. Chiswell, 9 Ves. 118.

⁵⁰ Troy etc. Factory v. Winslow, 11 Blatchf. 513, Fed. Cas. No. 14,199; Leake & Watts Orphan House v. Lawrence, 11 Paige, 80; Voorhis v. Childs, 17 N. Y. 354; Voorhis v. Baxter, 18 Barb. 392. For an excellent discussion of the reasons for the rules in England and in America, see Voorhis v. Childs, *supra*. See, also, cases collected in note, 43 Am. St. Rep., at 367.

⁵¹ Wilkinson v. Henderson, 1 Mylne & K. 582.

Equitable Remedies, Vol. II—97

TABLE OF CASES CITED.

A

Abbey v. Van Campen, 1 Freem. Ch. (Miss.) 273.....	1481
Abbott v. Allen, 2 Johns. Ch. 519, 7 Am. Dec. 554.....	1157
Abbott v. American Hard Rubber Co., 33 Barb. 578.....	541
Abbott v. Berry, 46 N. H. 369.....	1209
Abbott v. Bosworth, 36 Ohio St. 605.....	1381
Abbott v. Edgerton, 53 Ind. 196.....	687
Abbott v. Molestead, 74 Minn. 293, 299, 73 Am. St. Rep. 348, 77 N. W. 227.....	1304
Abbott v. Pond, 142 Cal. 393, 76 Pac. 60.....	873
Abendroth v. New York El. R. Co., 122 N. Y. 1, 19 Am. St. Rep. 461, 25 N. E. 496, 11 L. R. A. 634.....	777
Abercrombie v. Knox, 3 Ala. 728, 37 Am. Dec. 721.....	1136
Abernathy v. Orton, 42 Or. 437, 95 Am. St. Rep. 774, 71 Pac. 327..	203
Abernethy v. Hutchinson, 1 Hall & T. 28, 40, 3 L. J. Ch. 209.....	983
A. B. Farquhar Co. v. National Harrow Co., 102 Fed. 714, 42 C. C. A. 600, 49 L. R. A. 755.....	1007
Abraham v. Meyers, 29 Abb. N. C. 384, 23 N. Y. Supp. 226.....	620
Abraham v. Ordway, 158 U. S. 416, 15 Sup. Ct. 894, 39 L. ed. 1036.40, 46 A. B. Smith Co. v. Bank of Holmes Co. (Miss.), 18 South. 847....	1075
Acker, In re, 66 Fed. 290.....	303, 323
Ackerman v. Halsey, 37 N. J. Eq. 356.....	384
Ackerman v. Thummel, 40 Neb. 95, 58 N. W. 738.....	610, 630
Ackerman v. True, 175 N. Y. 353, 67 N. E. 629.....	914
Ackerman v. True, 56 App. Div. 54, 66 N. Y. Supp. 6.....	930
Ackland v. Gravener, 31 Beav. 482.....	106
Ackley v. Dygert, 33 Barb. 189.....	1103
Acquaackanonk etc. Co. v. Watson, 29 N. J. Eq. 366.....	900
Adair v. Adair, 78 Mo. 630.....	1351
Adair v. McDonald, 42 Ga. 506.....	1144
Adams v. Adams, 17 Or. 247, 20 Pac. 633.....	1361
Adams v. Baker, 24 Nev. 162, 77 Am. St. Rep. 799, 51 Pac. 252...	1146
Adams v. Beman, 10 Kan. 37.....	695
Adams v. Brennan, 177 Ill. 194, 69 Am. St. Rep. 222, 52 N. E. 314, 42 L. R. A. 418.....	609, 627
Adams v. Bridgewater Iron Co., 26 Fed. 324.....	973
Adams v. Crawford, 116 Cal. 495, 48 Pac. 488.....	1252
Adams v. Dixon, 19 Ga. 513, 65 Am. Dec. 608.....	80, 83
Adams v. Heckscher, 80 Fed. 742, 83 Fed. 281.....	26, 23
Adams v. Mercantile Trust Co., 66 Fed. 617, 621, 15 C. C. A. 1	295, 326
Adams v. Messenger, 147 Mass. 185, 6 Am. St. Rep. 679, 17 N. E. 491.....	1265, 1266
Adams v. Michael, 38 Md. 123, 17 Am. Rep. 516.....	892
Adams v. Reed, 11 Utah, 480, 40 Pac. 720.....	1163

Adams v. Spokane Drug Co., 57 Fed. 888, 23 L. R. A. 334.....	371
Adams v. Stevens, 49 Me. 362.....	1146
Adams v. Wease, 1 Bro. C. C. 567.....	1315
Adams and Westlake Co. v. Deyette, 8 S. D. 137, 59 Am. St. Rep. 746, 65 N. W. 471, 31 L. R. A. 497.....	1458
Adamson v. Nassau R. R. Co., 89 Hun, 261, 34 N. Y. Supp. 1073..	620
Adderley v. Dixon, 1 Sim. & St. 607, 610.....	1256, 1258, 1262, 1267
Addyston Pipe & Steel Co. v. Chicago, 170 Ill. 580, 48 N. E. 967, 44 L. R. A. 405.....	1422
Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 20 Sup. Ct. 96, 44 L. ed. 136.....	1053
Adkins v. Holmes, 2 Ind. 197, 199.....	1382
Adkins v. Loucks, 107 Wis. 587, 83 N. W. 934.....	1443
Adler v. Milwaukee etc. Mfg. Co., 13 Wis. 57, 62.....	228
Adler v. Sullivan, 115 Ala. 582, 22 South. 87.....	1242, 1245, 1250, 1251
Adler v. Turnbull, 57 N. J. L. 62, 30 Atl. 319.....	195
Adrian v. National Harrow Co., 98 Fed. 118, 111 Fed. 637.....	1057
Aetna Life Ins. Co. v. Parker, 96 Tex. 287, 72 S. W. 168; 30 Tex. Civ. App. 521, 72 S. W. 621.....	1496
Aetna Nat. Bank v. United States L. Ins. Co., 25 Fed. 531.....	92
Agar v. Fairfax, 17 Ves. 533, 2 Lead. Cas. Eq., 4th Am. ed., 865, 880, 894.....	1182, 1183, 1190, 1199, 1214
Agar v. Macklew, 2 Sim. & St. 418.....	1275
Ager v. Murray, 105 U. S. 126, 26 L. ed. 942.....	1414
Agnew v. Southern Ave. Land Co., 204 Pa. St. 752, 53 Atl. 752..	1290
Ahern v. Freeman, 46 Minn. 156, 24 Am. St. Rep. 206, 48 N. W. 677.....	1504
Ahern v. Newton & B. St. Ry. Co., 105 Fed. 702.....	578
Ahlens v. Thomas, 24 Nev. 407, 77 Am. St. Rep. 820, 56 Pac. 93..	924
Aiello v. Montecalfo, 21 R. I. 496, 44 Atl. 931.....	998
Aigeltinger v. Einstein, 143 Cal. 609, 101 Am. St. Rep. 131, 77 Pac. 669.....	1424, 1431
Aiken v. Colorado Riv. Imp. Co., 72 Fed. 591.....	213
Aiken v. Gale, 37 N. H. 501.....	1485
Aiken v. Ogilvie, 12 La. Ann. 353.....	1534
Aiken v. Peay, 5 Strob. 15, 53 Am. Dec. 181.....	1488
Aikens v. Wisconsin (Nov., 1904), 195 U. S. 194, 25 Sup. Ct. 13..	1048
A. J. Dwyer Pine Land Co. v. Whiteman, 92 Minn. 55, 99 N. W. 362.....	1148
Alabama Coal and Coke Co. v. Shackelford, 137 Ala. 224, 97 Am. St. Rep. 23, 34 South. 833.....	215, 216
Alabama etc. Co. v. Pettway, 24 Ala. 544.....	1227
Alabama Iron & Steel Co. v. McKeever, 112 Ala. 134, 20 South. 84..	201
Alabama Nat. Bank v. Mary Lee Coal etc. Co., 108 Ala. 288, 19 South. 404.....	181
A. L. & J. J. Reynolds Co. v. Dreyer, 12 Misc. Rep. 368, 33 N. Y. Supp. 649.....	527, 537
Alaska & Chicago C. Co. v. Solner, 123 Fed. 855, 59 C. C. A. 662..	1165
Albany & Boston Min. Co. v. Auditor-General, 37 Mich. 391..	704, 706
Albany & Rensselaer I. & S. Co. v. Southern Agricultural Works, 76 Ga. 135, 2 Am. St. Rep. 26.....	200, 1457
Albany City Bank v. Schermerhorn, 9 Paige, 372, 38 Am. Dec. 551; 10 Paige, 263.....	317
Albany City Nat. Bank v. Maher, 19 Blatchf. 175, 9 Fed. 884....	662
Albany City Sav. Inst. v. Burdick, 87 N. Y. 40.....	1145

TABLE OF CASES CITED.

1541

Albea v. Griffin, 2 Dev. & B. Eq. 9.....	1354
Albers v. Merchants' Exchange, 39 Mo. App. 583.....	556
Albert v. Strange, 1 Macn. & G. 25, 1 Hall & T. 1, 2 De Gex & S.....	652, 988
Albert Lea v. Neilsen, 83 Minn. 101.....	1087
Albion State Bank v. Knickerbocker, 125 Mich. 311, 7 Detroit Leg. N. 536, 84 N. W. 311.....	1505, 1512
Albrecht v. City of St. Paul, 47 Minn. 531, 50 N. W. 608.....	708
Albright v. Albright, 91 N. C. 220.....	160
Albright v. Texas, S. F. & N. R. Co., 8 N. Mex. 422, 46 Pac. 448..	1432
Albro v. Dayton, 50 N. J. Eq. 574, 25 Atl. 937.....	1242
Albuquerque v. Zeiger, 5 N. M. 674, 27 Pac. 315.....	720
Albuquerque Nat. Bank v. Perea, 147 U. S. 87, 13 Sup. Ct. 194, 37 L. ed. 91.....	656, 662
Alcott v. Vultor, 33 App. Div. 245, 53 N. Y. Supp. 474.....	146
Alden v. Trubee, 44 Conn. 455.....	1226
Alderman v. Christie, 34 Ga. 152.....	1348
Alderson v. Commissioners, 32 W. Va. 640, 25 Am. St. Rep. 840, 9 S. E. 868, 5 L. R. A. 334.....	589
Aldrich v. Aldrich, 56 Vt. 324, 48 Am. Rep. 791.....	1488
Aldrich v. Barton, 138 Cal. 220, 94 Am. St. Rep. 43, 71 Pac. 169..	1099
Aldrich v. Billings, 14 R. I. 233.....	509
Aldrich v. Campbell, 4 Gray, 284.....	371
Aldrich v. Cooper, 8 Ves. 382, 5 Lead. Cas. Eq., 4th Am. ed., 2280, notes.....	1399
Aldrich v. Howard, 7 R. I. 87, 80 Am. Dec. 636.....	880
Aldridge v. Thompson, 2 Brown Ch. 149.....	97
Aleck v. Jackson, 49 N. J. Eq. 507, 23 Atl. 760.....	98
Alexander v. Alexander, 26 Neb. 68, 41 N. W. 1065.....	1196
Alexander v. Atlanta & W. P. R. Co., 113 Ga. 193, 38 S. E. 772, 54 L. R. A. 305.....	542
Alexander v. Davis, 42 W. Va. 465, 26 S. E. 291.....	1152
Alexander v. Donohoe, 143 N. Y. 203, 38 N. E. 263.....	1162
Alexander v. Fisher, 7 Ala. 514.....	804
Alexander v. Henderson, 105 Tenn. 431, 58 S. W. 648.....	740
Alexander v. Johnson, 144 Ind. 82, 41 N. E. 811.....	630
Alexander v. Mills, L. R. 6 Ch. App. 124.....	1322
Alexander v. Morse, 14 R. I. 153, 51 Am. Rep. 369.....	994
Alexander v. Relfe, 74 Mo. 516.....	360, 372
Alexander v. Tolleston Club, 110 Ill. 65.....	32
Alford v. Berkele, 29 Hun, 633.....	267, 269
Alger v. Anderson, 78 Fed. 729.....	53
Alkire Grocery Co. v. Richesin, 91 Fed. 79.....	1427
Allan v. Manitoba Ry. Co., 10 Manitoba, 106.....	345
Allard v. Jones, 15 Ves. 605.....	813
Alleghany City v. Millville etc. Co., 159 Pa. St. 411, 28 Atl. 202..	930
Alleghany Nat. Bank v. Reighard (Pa.), 54 Atl. 268.....	943
Allen v. Allen, 97 Fed. 525, 38 C. C. A. 336.....	1101
Allen v. Bemis, 120 Iowa, 172, 94 N. W. 560.....	1350
Allen v. Benners, 10 Phila. 10.....	493
Allen v. Board of Freeholders, 13 N. J. Eq. 68.....	927
Allen v. Buchanan, 97 Ala. 399, 38 Am. St. Rep. 187, 11 South. 777.....	28, 32
Allen v. Buffalo, 39 N. Y. 386.....	1237
Allen v. Camp, 17 Ky. (1 T. B. Mon.) 231, 15 Am. Dec. 109....	1424
Allen v. Central R. Co., 42 Iowa, 683.....	331

Allen v. Cooley, 60 S. C. 353, 38 S. E. 622.....	279
Allen v. Dallas & W. R. Co., 3 Woods, 316, Fed. Cas. No. 221. 252, 255	
Allen v. Dunlap, 24 Or. 229, 33 Pac. 675.....	846
Allen v. Flood, [1898] App. Cas. 1. 1012, 1014, 1017, 1018, 1019, 1024	
Allen v. Grant (Ga.), 50 S. E. 494.....	1471
Allen v. Hall, 50 Me. 253.....	1212
Allen v. Hamilton, 9 Gratt. 255.....	1077
Allen v. Hammond, 11 Pet. 63, 9 L. ed. 633.....	1151
Allen v. Hanks, 136 U. S. 311, 10 Sup. Ct. 961, 34 L. ed. 418....	1232
Allen v. Hawley, 6 Fla. 142, 63 Am. Dec. 198.....	142
Allen v. Hickey, 53 Ill. App. 437....	1113
Allen v. Marion, 11 Allen, 108.....	468
Allen v. Martin, L. R. 20 Eq. 462.....	830, 832
Allen v. Moore, 30 Colo. 307, 70 Pac. 682.....	1362
Allen v. New Dominion Oil & Gas Co., 24 Ky. Law Rep. 2169,	
73 S. W. 747.....	1225
Allen v. Pullman's Palace Car Co., 139 U. S. 661, 11 Sup. Ct.	
682, 35 L. ed. 304.....	656
Allen v. Stowell, 145 Cal. 666, 104 Am. St. Rep. 80, 79 Pac. 371..	914
Allen v. Wilmington etc. R. Co., 106 N. C. 515, 11 S. E. 576, 820..	1161
Allen v. Windstandly, 135 Ind. 105, 34 N. E. 699.....	1131
Allen v. Wood, 3 Ired. Eq. 386.....	1488
Allen v. Woonsocket Co., 11 R. I. 288.....	1532
Allen B. Wrisley Co. v. Iowa Soap Co., 122 Fed. 796, 59 C. C. A.	
54.....	993, 995
Allen Coal Co. v. Challis, 103 Ill. App. 52.....	835
Allerton v. Belden, 49 N. Y. 373.....	1155
Alliance Trust Co. v. Multnomah County, 38 Or. 433, 63 Pac. 498,	
30 L. R. A. 167.....	733, 735
Allis Chalmers Co. v. Reliable Lodge, 111 Fed. 264.....	1039, 1042
Allison v. Corson, 88 Fed. 581, 32 C. C. A. 12.....	484, 570
Allison v. Herring, 9 Sim. 583.....	1517
Allwood v. Cowen, 111 Ill. 481.....	679
Alma v. Loehr, 42 Kan. 368, 22 Pac. 424.....	622
Almony v. Hicks, 3 Head, 39.....	1226, 1234, 1239
Almy v. Daniels, 15 R. I. 312, 4 Atl. 753, 10 Atl. 654.....	1522
Alpaugh v. Wood, 45 N. J. Eq. 153, 16 Atl. 676.....	1521
Alpena v. Kelley, 97 Mich. 550, 56 N. W. 941.....	625
Alpers v. San Francisco, 12 Saw. 31, 32 Fed. 503....	599, 600, 601, 605
Alsop v. Riker, 155 U. S. 448-460, 39 L. ed. 218-222, 15 Sup. Ct.	
162.....	38
Alston v. Morris, 113 Ala. 506, 20 South. 950.....	567
Alt v. Graff, 65 Minn. 191, 68 N. W. 9.....	1249
Altgelt v. City of San Antonio, 81 Tex. 436, 17 S. W. 75, 13 L. R.	
A. 383.....	629, 742
Althen v. Vreeland (N. J. Eq.), 36 Atl. 479.....	526
Altschul v. Gittings, 86 Fed. 200.....	655
Alva State Bank v. Renfrew, 10 Okla. 26, 62 Pac. 285.....	732
Alvord v. Fletcher, 28 App. Div. 493, 51 N. Y. Supp. 117.....	510
Alvord v. Syracuse, 163 N. Y. 158, 57 N. E. 310.....	722, 1225, 1237
Alworth v. Seymour, 42 Minn. 526, 44 N. W. 1030.....	1276
Amelia etc. Co. v. Tenn. etc. Co., 123 Fed. 811.....	919
Amelung v. Seekamp, 9 Gill & J. (Md.) 468.....	939, 958
American Alkali Co. v. Kurtz (1905), 134 Fed. 663.....	1471
American Assn. v. Eastern Ky. Land Co., 68 Fed. 722.....	1197

American Biscuit & Mfg. Co. v. Klotz, 44 Fed. 721.....	108, 111, 115
American Bonding Co. v. National Mechanics' Bank, 97 Md. 598, 99 Am. St. Rep. 466, 55 Atl. 395.....	1509, 1511
American B. & L. Assn. v. Mathews, 13 Tex. Civ. App. 425, 35 S. W. 690.....	28
American Cable Ry. Co. v. Chicago City Ry. Co., 41 Fed. 522....	979
American Cable Ry. Co. v. Citizens' Ry. Co., 44 Fed. 484.....	979
American Clay Mfg. Co. v. American Clay Mfg. Co. of N. J., 198 Pa. St. 189, 47 Atl. 936.....	999
American Const. Co. v. Jacksonville, T. & K. W. R. Co., 52 Fed. 937.....	300, 303
American Dock etc. Co. v. School Trustees, 37 N. J. Eq. 266.....	1242
American Electrical Novelty Co. v. Newgold, 99 Fed. 567.....	983
American Express Co. v. Raymond, 189 Ill. 232, 59 N. E. 528....	683
American Fisheries Co. v. Lennen, 118 Fed. 869.....	523
American Freehold Land & M. Co. v. Maxwell, 39 Fla. 489, 22 South. 751....	570, 1134
American Investment Co. v. Ferrar, 87 Iowa, 437, 54 N. W. 361	115, 170, 174
American Loan & Trust Co. v. Central Vt. R. Co., 84 Fed. 917...	345
American Loan & Trust Co. v. East & West R. Co., 46 Fed. 101..	421
American Loan & Trust Co. v. Toledo etc. Co., 29 Fed. 416	117, 250, 253
American Nat. Bank v. National Ben. etc. Co., 70 Fed. 420.....	448
American Nat. Bank v. Northwestern Mut. L. Ins. Co., 89 Fed. 610, 32 C. C. A. 275.....	167, 171
American Order of Scottish Clans v. Merrill, 151 Mass. 558, 24 N. E. 918, 8 L. R. A. 320.....	998, 999
American Pig-Iron Storage Warrant Co. v. German, 126 Ala. 194, 85 Am. St. Rep. 21, 28 South. 603.....	1446
American Press Association v. Brantingham, 68 N. Y. Supp. 285, 57 App. Div. 399.....	92
American Press Assn. v. Daily Story Pub. Co., 120 Fed. 766.....	985
American Refrigerator Transit Co. v. Adams, 28 Colo. 119, 63 Pac. 410.....	671
American School of Magnetic Healing v. McAnnulty, 187 U. S. 94, 23 Sup. Ct. 33, 47 L. ed. 90.....	584
American Solid Leather Button Co. v. Anthony, 15 R. I. 338, 2 Am. St. Rep. 898, 5 Atl. 626.....	990
American Spirits Mfg. Co. v. Easton, 120 Fed. 440.....	1518
American Steel & W. Co. v. Wire etc. Union, 90 Fed. 598.....	1043
American Steel & W. Co. v. Wire etc. Union, 90 Fed. 608	1022, 1026, 1037
American Sulphite Pulp Co. v. Burgess Sulphite Fibre Co., 103 Fed. 975.....	983
American Surety Co. v. Great White Spirit Co., 58 N. J. Eq. 526, 43 Atl. 579.....	244
American Tel. & Tel. Co. v. Morgan Co. Tel. Co., 138 Ala. 597, 100 Am. St. Rep. 53, 36 South. 178.....	1065
American Trotting Register Assn. v. Gocher, 70 Fed. 237.....	986
American Trust & S. Bank v. McGettigan, 152 Ind. 582, 71 Am. St. Rep. 345, 52 N. E. 793.....	287, 288, 374
American Trust & S. Bank v. Thalheimer, 51 N. Y. Supp. 813, 29 App. Div. 170.....	101
American Tube & Iron Co. v. Hayes, 165 Pa. St. 489, 30 Atl. 936.	1466
American Unitarian Assn. v. Minot, 185 Mass. 589, 71 N. E. 551.	508

American Waltham Watch Co. v. United States Watch Co., 173 Mass. 85, 73 Am. St. Rep. 263, 53 N. E. 141, 43 L. R. A. 826...	997
American Waterworks Co. v. Farmers' L. & T. Co., 20 Colo. 203, 46 Am. St. Rep. 285, 37 Pac. 269, 25 L. R. A. 338.....	444, 450
Amerman v. Deane, 132 N. Y. 355, 28 Am. St. Rep. 584, 30 N. E. 741.....	508, 1317
Ames v. Ames, 148 Ill. 321, 340, 36 N. E. 110.....	152
Ames v. King, 2 Gray, 379.....	468, 991
Ames v. Sheehan, 161 Mass. 274, 37 N. E. 199.....	1407
Ames v. Union Pac. R. Co., 60 Fed. 967.....	392
Ames v. Union Pac. Ry. Co., 62 Fed. 7.....	394
Ames v. Witbeck, 179 Ill. 458, 53 N. E. 969.....	1266
Amick v. Woodworth, 58 Ohio St. 86, 50 N. E. 437.....	1500
Ammendale Norm. Inst. v. Anderson, 71 Md. 128, 17 Atl. 1030.	96, 97
Amos v. Norcross, 58 N. J. Eq. 256, 43 Atl. 195.....	836
Amoskeag Mfg. Co. v. Trainer, 101 U. S. 55, 25 L. ed. 995.....	990
Amsterdam etc. Co. v. Dean, 162 N. Y. 278, 56 N. E. 757.....	970
Amsterdam etc. Co. v. Dean, 13 App. Div. 42, 43 N. Y. Supp. 29	906, 968, 970.
Amter v. Conlan, 22 Colo. 150, 43 Pac. 1002.....	1251
Amusement Syndicate Co. v. City of Topeka, 68 Kan. 801, 74 Pac. 606.....	631
Anchor Elect. Co. v. Hawkes, 171 Mass. 101, 68 Am. St. Rep. 403, 50 N. E. 509, 41 L. R. A. 189.....	523
Andel v. Starkel, 192 Ill. 206, 61 N. E. 356.....	1087
Anderson v. Anderson, 124 Cal. 48, 56, 71 Am. St. Rep. 17, 56 Pac. 630, 57 Pac. 81.....	258
Anderson v. Buckley, 126 Ala. 623, 28 South. 729.....	221, 234
Anderson v. Cecil, 86 Md. 490, 38 Atl. 1074.....	262
Anderson v. Douglas County, 98 Wis. 393, 74 N. W. 109.751, 752, 755	
Anderson v. Eggers, 61 N. J. Eq. 85, 47 Atl. 727.....	1152
Anderson v. Gaines, 156 Mo. 664, 57 S. W. 726.....	1160
Anderson v. Guichard, 9 Hare, 245.....	140
Anderson v. Harvey's Heirs, 10 Gratt. 386.....	825
Anderson v. Indianapolis Drop Forging Co. (Ind. App.), 72 N. E. 277.....	1043
Anderson v. Matthews, 8 Wyo. 513, 58 Pac. 898.....	184
Anderson v. Mt. Sterling Telephone Co. (Ky.), 86 S. W. 1119...	532
Anderson v. Northrop, 30 Fla. 612, 12 South. 318.....	46, 55, 58,
Anderson v. Orient Fire Ins. Co., 88 Iowa, 579, 55 N. W. 348..	610, 624
Anderson v. Powell, 44 Iowa, 20.....	149
Anderson v. Provident Life & Trust Co., 25 Wash. 20, 64 Pac. 933.....	1408, 1410
Anderson v. Rowland, 18 Tex. Civ. App. 460, 44 S. W. 911.....	506
Anderson v. Wilkinson, 10 Smedes & M. 601.....	80
Anderson School Tp. v. Milroy Lodge etc., 130 Ind. 108, 30 Am. St. Rep. 206, 29 N. E. 411.....	1184
Andrew v. Babcock, 63 Conn. 109, 26 Atl. 715.....	1348, 1352
Andrews v. Andrews, 12 Ind. 348.....	1145
Andrews v. Board of Supervisors, 70 Ill. 65.....	606
Andrews v. Donnerstag, 70 Ill. App. 236.....	1410
Andrews v. Frierson, 134 Ala. 626, 33 South. 6.....	1155
Andrews v. Kibbee, 12 Mich. 94, 83 Am. Dec. 766.....	1441
Andrews v. King County, 1 Wash. 46, 22 Am. St. Rep. 136, 23 Pac. 409.....	745
Andrews v. Kingsbury (Ill.), 72 N. E. 11.....	525

Andrews v. Love, 50 Kan. 701, 31 Pac. 1094.....	697
Andrews v. Paschen, 67 Wis. 413, 30 N. W. 712.....	301
Andrews v. Steel City Bank, 57 Neb. 173, 77 N. W. 342.....	360, 382
Andrews v. Wilson's Assignee, 114 Ky. 671, 71 S. W. 890.....	162
Andriessen, Appeal of, 123 Pa. St. 303, 16 Atl. 840, 23 Wkly. Not. Cas. 46.....	1533
Angel v. Smith, 9 Ves. 335.....	302
Angell, In re, 131 Mich. 345, 91 N. W. 611.....	388, 406, 426, 433
Angell v. Hadden, 15 Ves. 244.....	69
Angier v. Webber, 96 Mass. (14 Allen) 211, 92 Am. Dec. 748....	523
Anglo-Italian Bank v. Davies, L. R. 9 Ch. Div. 275.....	119
Angus v. Craven, 132 Cal. 691, 696, 64 Pac. 1091.....	1243, 1244
Anheuser-Busch Brew. Assn. v. Hier, 52 Neb. 424, 72 N. W. 588..	1423
Ankenny v. Moffitt, 37 Minn. 109, 33 N. W. 320.....	1484
Annelly v. De Saussure, 26 S. C. 497, 4 Am. St. Rep. 725, 2 S. E. 490.....	1213
Anonymous, 2 Atk. 15.....	287
Anonymous, Mos. 237.....	812
Anonymous, 3 Swanst. 139, note.....	1202
Anonymous, 1 Ves. 140.....	919, 920
Anonymous, 2 Ves. 414, Ames, Cas. in Eq. Jur. 663.....	1002
Anonymous, 3 Ves. 515.....	279
Anonymous, 12 Ves. 4..	164
Ansley v. McLoud (Ind. Ter.), 82 S. W. 908.....	350
Anthony v. Burrow, 129 Fed. 783.....	588
Anthony v. Karbach, 64 Neb. 509, 97 Am. St. Rep. 662, 90 N. W. 243.....	1107
Anthony v. Masters, 28 Ind. App. 239, 62 N. E. 505.....	1114
Anthony v. Sturgis, 86 Ind. 479.....	686
Apgar's Admr. v. Hiler, 4 Zab. (24 N. J. L.) 812.....	1477
Apperson v. Ford, 23 Ark. 746, 758.....	1222
Appleby v. Brown, 24 N. Y. 143.....	1527
Applegate v. Applegate, 107 Iowa, 312, 78 N. W. 34.....	1441
Appleton v. Turnbull, 84 Me. 72, 24 Atl. 592.....	367
Appleton Water Co. v. Central T. Co., 93 Fed. 286, 35 C. C. A. 302..	325
Appleton Water Works Co. v. Appleton, 116 Wis. 363, 93 N. W. 262.....	631
Aquackanock etc. Co. v. Watson, 29 N. J. Eq. 366.....	909
Arbenz v. Wheeling & H. R. Co., 33 W. Va. 1, 10 S. E. 14, 5 L. R. A. 371.....	773
Arbuckle v. Blackburn, 113 Fed. 616, 51 C. C. A. 122.....	582, 1084
Archambeau v. Platt, 173 Mass. 249, 53 N. E. 816.....	350, 383
Archer v. American Waterworks Co., 50 N. J. Eq. 33, 24 Atl. 508.....	222, 224, 1396
Archer v. Munday, 17 S. C. 84.....	1210
Ardesco Oil Co. v. N. A. etc. Oil Co., 66 Pa. St. 381.....	1490
Arena Athletic Club v. McPartland, 41 App. Div. 352, 58 N. Y. Supp. 477.....	522, 1299
Arents v. Blackwell's Durham Tobacco Co., 101 Fed. 338.....	211
Arkansas B. & L. Assn. v. Madden, 175 U. S. 269, 20 Sup. Ct. 119, 44 L. ed. 159.....	655, 656
Armatage v. Fisher, 74 Hun, 167, 26 N. Y. Supp. 364 (affirming 4 Misc. Rep. 315, 24 N. Y. Supp. 650),.....	594
Armat Moving Picture Co. v. Edison Mfg. Co., 125 Fed. 939, 60 C. C. A. 380.....	983
Arment v. Hensel, 5 Wash. 152, 154, 31 Pac. 464.....	478

Armijo v. Neher (N. Mex.), 72 Pac. 12.....	1522
Armington v. Palmer , 21 R. I. 109, 79 Am. St. Rep. 786, 42 Atl. 308, 43 L. R. A. 95.....	998
Armitage v. Pulver , 37 N. Y. 494.....	1476, 1489
Armitage v. Toll , 64 Mich. 412, 31 N. W. 403.....	1402
Armstrong v. Connor , 86 Ala. 350, 5 South. 451.....	1230, 1232
Armstrong v. Scott , 36 Fed. 63.....	370, 371
Armstrong v. Warner , 49 Ohio St. 376, 31 N. E. 877, 17 L. R. A. 466.....	369, 371
Armstrong Co. v. Brinton , 47 Pa. St. 367.....	1086
Armstrong Co. v. Clarion Co. , 66 Pa. St. 218, 5 Am. Rep. 368....	1484
Armstrong v. Cheshire , 17 N. C. 234, 34 Am. Dec. 273.....	1115
Arn v. Arn , 81 Mo. App. 133.....	83
Arndt v. Griggs , 134 U. S. 316, 10 Sup. Ct. 557, 33 L. ed. 918.....	27, 1250
Arnett v. Bailey , 60 Ala. 435.....	1226, 1233
Arnett v. Coffey , 5 Colo. App. 560, 39 Pac. 894.....	1437
Arnett v. Munnerlyn , 71 Ga. 14.....	1213
Arnold v. Bright , 41 Mich. 210, 2 N. W. 16.....	118
Arnold v. Butterbaugh , 92 Ind. 403.....	1205
Arnold v. Hagerman , 45 N. J. Eq. 186, 14 Am. St. Rep. 712, 17 Atl. 93.....	1160
Arnold v. Hawkins , 95 Mo. 569, 8 S. W. 718.....	711
Arnold v. Henry , 155 Mo. 48, 78 Am. St. Rep. 556, 55 S. W. 1089. 590	
Arnold v. Middleton , 39 Conn. 406.....	673
Arnold v. Weimer , 40 Neb. 216, 58 N. W. 709.....	290
Arnot v. Birch , 29 App. Div. 356, 51 N. Y. Supp. 491.....	1445
Arrington v. Liscom , 34 Cal. 365, 94 Am. Dec. 722.....	1231
Arthur v. Case , 1 Paige, 447.....	869, 970
Arthur v. Lamb , 2 Drew. & S. 430.....	817
Arthur v. Oakes , 63 Fed. 310, 11 C. C. A. 209, 25 L. R. A. 414.....	305, 306, 793, 1022, 1041, 1042
Arthur v. School Dist. , 164 Pa. St. 410, 30 Atl. 299, 35 Wkly. N. C. 289.....	737
Arundell v. Phipps , 10 Ves. 139.....	821, 1264
Ashby v. Ashby (N. J.), 40 Atl. 118.....	803, 818
Ashby v. Blackwell , 2 Eden, 299.....	1397
Ashurst v. Lehman , 86 Ala. 370, 5 South. 731.....	105, 113, 261, 265, 266, 271
Ashurst v. McKenzie , 92 Ala. 484, 9 South. 262. 1173, 1174, 1176, 1177	
Ashurst v. Peck , 101 Ala. 499, 14 South. 541.....	1332
Ashton v. Corrigan , L. R. 13 Eq. 76.....	1258
Aslatt v. Corporation of Southampton , 16 Ch. D. 143.....	587, 594
Aspen M. & S. Co. v. Rucker , 28 Fed. 220.....	1201
Aston v. Aston , 1 Ves. Sr. 264.....	812, 813
Aston v. Lord Exeter , 6 Ves. 288.....	1175
Astor v. Turner , 11 Paige, 436, 43 Am. Dec. 766.....	167, 177
Atchison v. Peterson , 20 Wall. 507, 22 L. ed. 414.....	969
Atchison T. & S. F. R. Co. v. Lang , 46 Kan. 701, 26 Am. St. Rep. 165, 27 Pac. 182.....	913
Atchison, T. & S. F. R. Co. v. Meyer , 62 Kan. 696, 64 Pac. 597.....	766, 908
Atchison T. & S. F. R. Co. v. Spaulding , 69 Kan. 431, 77 Pac. 106.....	832
Atchison, T. & S. F. R. Co. v. Wiggins , 5 Okla. 477, 49 Pac. 1019. 730	
Atha v. Jewell , 33 N. J. Eq. 417.....	1194
Athenaeum L. Assn. Soc. v. Pooley , 3 De Gex & J. 294, 299....	1090

Atkins v. Wabash St. L. & P. R. Co., 29 Fed. 161.....	277, 282, 433, 452
Atkins v. W. A. Fletcher Co., 65 N. J. Eq. 658, 55 Atl. 1074.....	1035
Atkinson v. Allen, 36 U. S. App. 255, 71 Fed. 58, 17 C. C. A. 570.....	1087
Atkinson v. Carter, 101 Mo. App. 477, 74 S. W. 502.....	66, 70, 84
Atkinson v. Flannigan, 70 Mich. 639, 38 N. W. 655.....	80
Atkinson v. Henshaw, 2 Ves. & B. 85.....	139
Atkinson v. John E. Doherty Co., 121 Mich. 372, 80 Am. St. Rep. 507, 80 N. W. 285, 42 L. R. A. 219.....	1059
Atkinson v. Manks, 1 Cow. 691.....	65, 80, 88, 89, 94, 95, 96, 97
Atkinson v. Wykoff, 58 Mo. App. 86.....	606
Atlanta v. Gate City Gaslight Co., 71 Ga. 106.....	633, 635
Atlanta v. McDaniel, 96 Ga. 190, 22 S. E. 896.....	66
Atlanta v. Stein, 111 Ga. 789, 36 S. E. 932, 51 L. R. A. 335.....	627
Atlanta & F. R. Co. v. Western Ry., 50 Fed. 790, 2 U. S. App. 227, 1 C. C. A. 676.....	1426
Atlanta Ry. etc. Co. v. Atlanta Rap. Transit Co., 113 Ga. 481, 39 S. E. 12.....	964
Atlantic & B. R. Co. v. Seaboard Air Line Ry., 116 Ga. 412, 42 S. E. 761.....	836
Atlantic City v. New Auditorium Pier Co. (N. J. Eq.), 59 Atl. 159	511
Atlantic C. W. W. Co. v. Consumers' W. Co., 44 N. J. Eq. 527, 15 Atl. 581.....	483
Atlantic Dock Co. v. Leavitt, 54 N. Y. 35, 13 Am. Rep. 556.....	506
Atlantic Trust Co. v. Consolidated Electric Storage Co., 49 N. J. Eq. 402, 23 Atl. 934.....	241, 242
Atlantic Trust Co. v. Woodbridge Canal Co., 79 Fed. 39.....	416
Atlas Bank v. Nahant Bank, 23 Pick. 480.....	294, 307
Atlas Iron Construction Co., In re, 2 N. Y. Ann. Cas. 124, 38 N. Y. Supp. 172.....	208
Atlas Sav. etc. Assn. v. Kirklin, 110 Ga. 572, 35 S. E. 772.....	157
Attenborough v. London and St. Katherine's Dock Co., L. R. 3 C. P. D. 450.....	71, 79, 82, 85
Atterbury v. Gill, 3 Ban. & A. 174, Fed. Cas. No. 638.....	979
Attorney-General v. Algonquin Club, 153 Mass. 447, 27 N. E. 2, 11 L. R. A. 500.....	512
Attorney-General v. American Tobacco Co. (1897), 55 N. J. Eq. 352, 36 Atl. 971.....	1049, 1051
Attorney-General v. Bank of Niagara, Hopk. Ch. 354.....	540
Attorney-General v. Birmingham & O. T. Co., 3 Macn. & G. 453, 461.....	540
Attorney-General v. Board of Education, 133 Mich. 681, 95 N. W. 746.....	535
Attorney-General v. Brighton, [1900] 1 Ch. 276.....	930
Attorney-General v. Burrows, Dick. 128.....	806
Attorney-General v. Cambridge etc. Gas Co., 17 Week. Rep. 145, L. R. 4 Ch. App. 71.....	864, 927
Attorney-General v. Central R. Co. (N. J. Eq.), 59 Atl. 348.....	51
Attorney-General v. Chicago etc. R. R. Companies, 35 Wis. 530..	539
Attorney-General v. Cleaver, 18 Ves. 211, 219.....	884, 927
Attorney-General v. Cohoes Co., 6 Paige Ch. 133, 29 Am. Dec. 755.....	797, 918, 928, 929
Attorney-General v. Cole, [1901] 1 Ch. D. 205.....	925
Attorney-General v. Colney etc. Asylum, L. R. 4 Ch. App. 146..	909, 910
Attorney-General v. Council etc. of Birmingham, 4 Kay & J. 528, 538, 539.....	853, 909
Attorney-General v. Eau Claire, 37 Wis. 400.....	872, 928, 972
Attorney-General v. Fullerton, 2 Ves. & B. 263.....	1175, 1177

Attorney-General v. Gee, L. R. 10 Eq. 131.....	927
Attorney-General v. Great North. Ry., 1 Drew. & S. 154.....	539
Attorney-General v. Greenville & H. Ry. Co., 59 N. J. Eq. 372, 46 Atl. 638	540
Attorney-General v. Guardian M. L. I. Co., 77 N. Y. 272.....	362, 375
Attorney-General v. Hamilton, 1 Madd. 214.....	1215
Attorney-General v. Heatley, [1897] 1 Ch. 560.....	914, 924
Attorney-General v. Hunter, 1 Dev. Eq. (16 N. C.) 12.....	927
Attorney-General v. Jamaica Pond Co., 133 Mass. 361.....	973
Attorney-General v. London & N. W. R. Co., [1900] 1 Q. B. 78....	540
Attorney-General v. Marlborough, 3 Madd. 498.....	818
Attorney-General v. Nichol, 16 Ves. 338, 342.....	866, 934, 943
Attorney-General v. Props. etc. Canal, L. R. 2 Eq. 71.....	924
Attorney-General v. Sheffield etc. Co., 3 De Gex, M. & G. 304, 328	840, 863, 917, 927, 929
Attorney-General v. Shrewsbury etc. Co., L. R. 21 Ch. D. 752....	928
Attorney-General v. Stephens, 6 De Gex, M. & G. 111.....	1176, 1177
Attorney-General v. Steward, 20 N. J. Eq. (5 C. E. Green) 415....	
.....	890, 917, 927, 929
Attorney-General v. Steward, 21 N. J. Eq. 340.....	918, 929
Attorney-General v. Terry, L. R. 9 Ch. Ap. 423.....	909
Attorney-General v. Tudor Ice Co., 104 Mass. 239, 6 Am. Rep. 227.	540
Attorney-General v. Utica Ins. Co., 2 Johns. Ch. 371.....	540
Atwater v. Stromberg, 75 Minn. 277, 77 N. W. 963.....	367
Auburn etc. P. R. v. Douglass, 12 Barb. 553.....	1069
Auchincloss v. Metropolitan El. R. Co., 69 App. Div. 63, 74 N. Y. Supp. 534, reversing 60 N. Y. Supp. 792.....	778
Auckland v. Westminster Board, L. R. 7 Ch. App. 597.....	607, 828
Aultman v. Brumfield, 102 Fed. 7.....	1079
Aultman v. Higbee, 32 Tex. Civ. App. 521, 74 S. W. 955.....	1107
Austin v. Austin City Cemetery Assn., 87 Tex. 330, 47 Am. St. Rep. 114, 28 S. W. 528.....	633, 635
Austin v. Bruner, 65 Ill. App. 301.....	1429
Austin v. Coggeshall, 12 R. I. 329, 34 Am. Rep. 648.....	600, 630, 632
Austin v. Davis, 128 Ind. 472, 475, 25 Am. St. Rep. 456, 26 N. E. 890, 12 L. R. A. 120.....	1357
Austin v. Figueira, 4 Paige, 56.....	189
Austin v. First Nat. Bank, 47 Ill. App. 224	1434
Austin v. Goodrich, 49 N. Y. 266.....	1246
Austin v. Kuehn, 211 Ill. 113, 71 N. E. 841.....	1259
Austin v. Morris, 23 S. C. 393.....	1429
Averall v. Wade, Lloyd & G. 252.....	1401
Avery v. Boston Safe Deposit & T. Co., 72 Fed. 700.....	444, 448
Avery v. Empire Woolen Co., 82 N. Y. 582.....	858
Avery v. Job, 25 Or. 512, 36 Pac. 293.....	607
Avery v. New York etc. Co., 106 N. Y. 142, 20 N. E. 619.....	947
Avery v. Payne, 12 Mich. 549.....	1193
Avery v. Popper (Tex. Civ. App.), 45 S. W. 951.....	1404
Avery v. Ryan, 74 Wis. 591, 43 N. W. 317.....	1266
Avery v. Ware, 58 Ala. 475.....	1517
Avocato v. Dell' Ara (Tex. Civ. App.), 84 S. W. 443.....	1103
Aycock v. San Antonio Brewing Assn., 26 Tex. Civ. App. 341, 63 S. W. 953.....	770
Aydlett v. Pendleton, 111 N. C. 28, 32 Am. St. Rep. 776 (mono- graphic note), 16 S. E. 8.....	1187
Ayer v. Baumgartner, 15 Ill. 444.....	1312
Ayers, Ex parte, 123 U. S. 443, 8 Sup. Ct. 164, 31 L. ed. 216...582,	654

Ayers v. Widmayer, 188 Ill. 121, 58 N. E. 956.....	677
Aylesford v. Morris, L. R. 8 Ch. 484.....	1086
Aymer v. Gault, 2 Paige, 284.....	97
Aynsley v. Glover, L. R. 18 Eq. 544, 552.....	944, 945
Aynsley v. Glover, L. R. 10 Ch. App. 283.....	945, 948

B

Babb v. Sullivan, 43 S. C. 436, 21 S. E. 277.....	34
Babbitt v. Selectmen of Savoy, 3 Cush. 530.....	468
Babcock v. New Jersey Stock Yard Co., 20 N. J. Eq. 296.....	916
Bachelder v. Bean, 76 Me. 370.....	1076
Bachelder v. Fiske, 17 Mass. 464.....	1488
Backer v. Pyne et al., 130 Ind. 288, 30 Am. St. Rep. 231, 30 N. E. 21.....	1498
Backes v. Curran, 69 App. Div. 188, 74 N. Y. Supp. 723.....	516
Backler v. Farrow, 2 Hill Eq. 111.....	1213
Bacon v. American Surety Co., 65 N. Y. Supp. 738, 53 App. Div. 150.....	92
Bacon v. Horne, 123 Pa. St. 452, 16 Atl. 794, 2 L. R. A. 355....	447
Bacon v. Jones, 4 Mylne & C. 433.....	975
Badeau v. Rogers, 2 Paige, 209.....	65, 97, 99
Badeau v. Tylee, 1 Sandf. Ch. 270.....	91
Baden v. Pembroke, 2 Vern. 213.....	1375
Badger v. Badger, 2 Wall. 87, 95, 17 L. ed. 836.....	54, 62
Badger v. Boardman, 16 Gray, 559.....	505
Badgett v. Frick, 28 S. C. 176, 5 S. E. 355.....	571
Badgley v. Bruce, 4 Paige, 98.....	1168
Baer v. Higson, 26 Utah, 78, 72 Pac. 180.....	1123
Baer v. McCullough, 176 N. Y. 97, 68 N. E. 129.....	341, 342, 351
Bagby v. Atlantic etc. R. R. Co., 86 Pa. St. 291.....	445
Bagley v. Illinois Trust & Sav. Bank, 199 Ill. 76, 64 N. E. 1085.....	174, 175
Bagley v. Scudder, 66 Mich. 97, 33 N. W. 47.....	108, 188
Bagnall v. Villar, L. R. 12 Ch. D. 812.....	569, 816
Bagshaw v. Eastern Union Ry., 7 Hare, 114, 130, 131.....	542
Baier v. Hosmer, 107 Wis. 380, 83 N. W. 645.....	766
Bailey v. American Nat. Bank, 12 Colo. App. 66, 54 Pac. 912.....	1410
Bailey v. Bailey, 41 S. C. 337, 44 Am. St. Rep. 713, 19 S. E. 669, 728.....	1501, 1510
Bailey v. Bussing, 28 Conn. 455.....	1484
Bailey v. Collins, 59 N. H. 459.....	523
Bailey v. Culver, 84 Mo. 531.....	946, 952
Bailey v. Gray, 53 S. C. 503, 31 S. E. 354.....	942
Bailey v. Hobson, L. R. 5 Ch. 180.....	1209
Bailey v. Lane, 15 Abb. Pr. 373, note.....	195
Bailey v. New York, 38 Misc. Rep. 641, 78 N. Y. Supp. 210.....	916
Bailey v. Piper, L. R. 18 Eq. 683.....	1364
Bailey v. Ryder, 10 N. Y. 363.....	31, 450
Bailey v. Schnitzius, 45 N. J. Eq. 178, 16 Atl. 680.....	955, 960, 1069
Bailey v. Sisson, 1 R. I. 233.....	1182, 1201
Baily v. Taylor, 1 Russ. & M. 73, Ames, Cases in Eq. Jur., 654....	985
Bain v. Clinton Loan Assn., 112 N. C. 248, 17 S. E. 154.....	371
Bainbrige v. Baddeley, 3 Maen. & G. 413, 419.....	109, 112, 153, 155
Baines v. Babcock, 95 Cal. 581, 29 Am. St. Rep. 158, 27 Pac. 674, 30 Pac. 776.....	1464, 1469, 1470
Baines v. Barnes, 64 Ala. 375.....	1226, 1233
Baines v. Baker, 1 Amb. 158.....	862
Baines v. West Coast L. Co., 104 Cal. 1, 37 Pac. 767.....	1469

Baird v. Baird's Heirs, 1 Dev. & B. Eq. 524, 31 Am. Dec. 399..	1189, 1528
Baird v. Jackson, 98 Ill. 78.....	1212
Baker v. Ault, 78 Fed. 394.....	305
Baker v. Backus' Admr., 32 Ill. 79, 96. 105, 109, 119, 209, 213, 216, 280	
Baker v. Bank of Australasia, 1 Com. B., N. S., 515.....	99
Baker v. Beach, 15 Wis. 108.....	1393
Baker v. Briggs, 99 Va. 360, 3 Va. Sup. Ct. Rep. 252.....	744
Baker v. Brown, 64 Hun, 627, 19 N. Y. Supp. 258.....	85
Baker v. Clark, 128 Cal. 181, 60 Pac. 677.....	1231
Baker v. Cooper, 57 Me. 388.....	356, 358
Baker v. Cummings, 169 U. S. 189, 18 Sup. Ct. 367, 42 L. ed.	
711	34, 36
Baker v. Cunningham, 162 Mo. 134, 85 Am. St. Rep. 490, 62 S.	
W. 445.....	45
Baker v. Kinnaird, 94 Ky. 5, 21 S. W. 237.....	1451
Baker v. Louisiana etc. R. R. Co., 34 La. Ann. 754.....	204
Baker v. Maxwell, 99 Ala. 584, 14 South. 568.....	1160
Baker v. McDaniel, 178 Mo. 447, 77 S. W. 531.....	920
Baker v. National Biscuit Co., 96 Ill. App. 228.....	803, 811
Baker v. O'Riordan, 65 Cal. 368, 4 Pac. 232.....	1083
Baker v. Pottmeyer, 75 Ind. 451.....	523
Baker v. Redd, 44 Iowa, 179.....	1094
Baker v. Sanders, 80 Fed. 889, 26 C. C. A. 220.....	997
Baker v. Sebright, L. R. 13 Ch. D. 179, 186.....	812
Baker v. Sheehan, 29 Minn. 235, 12 N. W. 704.....	469
Baker v. Slack, 130 Fed. 514, 65 C. C. A. 138.....	996
Baker v. Varney, 129 Cal. 564, 79 Am. St. Rep. 140, 62 Pac. 100.	
Baker v. Weaver, 104 Ga. 228, 30 S. E. 726.....	872
Balch v. Wilson, 25 Minn. 299.....	367
Balchen v. Crawford, 1 Sandf. Ch. (N. Y.) 380.....	95
Bald Eagle Val. R. Co. v. Nittany Val. R. Co., 171 Pa. St. 284,	
50 Am. St. Rep. 807, 33 Atl. 239, 29 L. R. A. 423.....	507
Baldwin v. Aldrich, 34 Vt. 532, 80 Am. Dec. 695.....	1186
Baldwin v. Commissioners of Washington Co., 85 Md. 145, 36	
Atl. 764.....	702
Baldwin v. Davidson, 139 Mo. 118, 61 Am. St. Rep. 460, 40 S.	
W. 765.....	1098
Baldwin v. Hosmer, 101 Mich. 119, 59 N. W. 432, 25 L. R. A.	
739	443, 454
Baldwin v. Inhab. of Wilbraham, 140 Mass. 459, 4 N. E. 829....	621
Baldwin v. Salter, 8 Paige Ch. 473, 475.....	1337, 1338, 1339
Baldwin v. Sherwood, 117 Ga. 827, 45 S. E. 216.....	1356
Baldwin v. Shine, 84 Ky. 510, 2 S. W. 164.....	700
Baldwin v. Squier, 31 Kan. 283, 1 Pac. 591.....	1357
Baldwin v. Thompson, 15 Iowa, 504, 508.....	1375
Ball v. Ball, 20 R. I. 520, 40 Atl. 234.....	45
Ball v. Best, 135 Fed. 434.....	997
Ball v. Mabry, 91 Ga. 781, 18 S. E. 64.....	341
Ball v. Maysville & B. S. R. Co., 102 Ky. 486, 80 Am. St. Rep.	
362, 43 S. W. 731.....	249
Ball v. Oliver, 2 Ves. & B. 96.....	140
Ball v. Ray, L. R. 8 Ch. App. 467.....	870
Ball v. Rutland R. Co., 93 Fed. 513.....	546
Ball v. Siegel, 116 Ill. 137, 56 Am. Rep. 766, 4 N. E. 667.....	991
Ballard v. Nashville & K. R. Co., 94 Tenn. (10 Pickle) 205, 28	
S. W. 1088	1078
Ballard v. Pittsburgh, 12 Fed. 783.....	980
Ballard v. Tomlinson, L. R. 29 Ch. D. 115.....	869, 972

Ballentine v. Beall , 3 Seam. 203.....	1427
Ballentine v. Harrison , 37 N. J. Eq. (10 Stew.) 560, 45 Am. Rep. 667.....	828
Balles v. Duff , 54 Barb. 215.....	279
Ballin v. Loeb , 78 Wis. 404, 47 N. W. 516, 10 L. R. A. 742.....	247, 1427
Balls v. Balls , 69 Md. 388, 16 Atl. 18.....	1426
Balogh v. Lyman , 6 App. Div. 271, 39 N. Y. Supp. 780.....	576, 1082
Baltimore v. New Orleans , 45 La. Ann. 526, 12 South. 878.....	1184
Baltimore v. Radecke , 49 Md. 217, 33 Am. Rep. 239.....	633
Baltimore & O. R. Co. v. Arthur , 90 N. Y. 234.....	68, 80, 81
Baltimore & O. R. Co. v. Cannon , 72 Md. 493, 20 Atl. 123.....	221
Baltimore & O. R. Co. v. Strauss , 37 Md. 237.....	788
Baltimore & O. R. Co. v. Trimble , 51 Md. 99.....	1210
Baltimore & O. R. Co. v. Wabash R. R. Co. , 119 Fed. 678, 57 C. C. A. 322.....	324, 328
Baltimore & P. R. Co. v. Baptist Church , 108 U. S. 317, 329, 2 Sup. Ct. 719, 27 L. ed. 739.....	873, 910
Baltimore Car-Wheel Co. v. Bemis , 29 Fed. 95.....	1056, 1057
Baltimore Humane Impartial Soc. v. Pierce , 99 Md. 352, 58 Atl. 26.....	1294
Banger's Appeal , 109 Pa. St. 79, 16 Wkly. Not. Cas. 289.....	737
Bangs v. Loveridge , 60 Fed. 963.....	54
Bangs v. McIntosh , 23 Barb. 591.....	209, 244, 363
Bank v. Barry , 3 Irish Eq. 443.....	184
Bank v. Kerr , 2 Md. Ch. 460.....	70
Bank v. Tallman , 31 Barb. 201.....	177
Bank v. Tilden , 66 Hun. 635, 22 N. Y. Supp. 11.....	185
Bank of America, Petitioner , 13 R. I. 176.....	202
Bank of Augusta v. Earl , 13 Pet. 519, 10 L. ed. 274.....	438
Bank of Bethel v. Pahquioque Bank , 14 Wall. 383, 20 L. ed. 840.....	385
Bank of Charleston N. B. A. v. Dowling , 52 S. C. 345, 29 S. E. 788.....	1441
Bank of Columbia v. Hagner , 1 Pet. 454, 464, 7 L. ed. 219.....	1338
Bank of Commerce v. Central Coal & Coke Co. , 53 C. C. A. 334, 115 Fed. 878.....	404
Bank of Commerce v. First Nat. Bank , 150 Ind. 588, 50 N. E. 566.....	1390
Bank of England v. Lunn , 15 Ves. Jr. 569, 577.....	1415
Bank of Florence v. United States Savings & Loan Co. , 104 Ala. 297, 16 South. 110.....	112, 261, 272
Bank of Fort Madison v. Alden , 129 U. S. 372, 9 Sup. Ct. 332, 32 L. ed. 725.....	1466
Bank of Garnett v. Ferris , 55 Kan. 120, 39 Pac. 1042.....	696
Bank of Kentucky v. Hancock's Admr. , 36 Ky. (6 Dana) 284, 32 Am. Dec. 76.....	1095
Bank of Kentucky v. Stone , 88 Fed. 383.....	646, 656, 657
Bank of Mississippi v. Duncan , 52 Miss. 740, 743.....	107
Bank of Monroe v. Schermerhorn , Clarke Ch. (N. Y.) 214.....	183
Bank of Ogdensburgh v. Arnold , 5 Paige, 38.....	176
Bank of Opelika v. Kizer , 119 Ala. 194, 24 South. 11.....	1420
Bank of Orangeburg v. Kohn , 52 S. C. 120, 29 S. E. 625.....	1403
Bank of Santa Fe v. Buster , 50 Kan. 356, 31 Pac. 1094.....	695
Bank of Tennessee v. Dibrell , 3 Sneed (Tenn.), 379.....	1422
Bank of Toronto v. Hunter , 4 Bosw. (N. Y.) 646.....	1494
Bank of Turkey v. Ottoman Co. , L. R. 2 Eq. 366.....	487
Bank of Ukiah v. Moore , 106 Cal. 673, 39 Pac. 1071.....	571
Bank of United States v. Schultz , 2 Ohio, 471.....	1235
Bank of Woodland v. Heron , 120 Cal. 614, 54 Pac. 1006.....	181, 182, 296

Bank of Wooster v. Stevens, 1 Ohio St. 233, 59 Am. Dec. 619..	1428
Bankers' Life Ins. Co. v. Robbins, 53 Neb. 44, 73 N. W. 269, 46 Cent. L. J. 109.....	1120
Banks v. Frazier, 23 Ky. Law Rep. 1197, 64 S. W. 983.....	906
Banks v. McDivitt, 13 Blatchf. 163, Fed. Cas. No. 961.....	986
Barbee v. Shannon, 1 Ind. Ter. 199, 40 S. W. 584.....	830, 832, 835
Barber v. International Co. of Mexico, 73 Conn. 587, 48 Atl. 758	117, 228, 281, 1470
Barber v. Manier, 71 Miss. 725, 15 South. 890.....	262
Barber v. Penley, [1893] 2 Ch. 447.....	921
Barber v. West Jersey Title & Guar. Co., 53 N. J. Eq. 158, 32 Atl. 222, 371	577
Barbour v. Hickey, 2 App. D. C. 207, 213.....	1273, 1369
Barbour v. Nat. Exch. Bank, 45 Ohio St. 133, 12 N. E. 5.....	361
Barbour v. Nat. Exch. Bank, 50 Ohio St. 90, 33 N. E. 542, 20 L. R. A. 192	1086
Barclay v. Abraham, 121 Iowa, 619, 100 Am. St. Rep. 365, 96 N. W. 1080	869, 898, 899, 971
Barclay v. Henderson, 44 Ala. 269.....	1226
Bard v. Bingham, 54 Ala. 463.....	141, 145
Bardrick v. Dillon, 7 Okla. 535, 54 Pac. 785.....	730, 731, 732
Barger v. Gery, 64 N. J. Eq. 263, 53 Atl. 483.....	1325
Barhite v. Home Tel. Co., 50 App. Div. 25, 63 N. Y. Supp. 659..	620
Baring v. Nash, 1 Ves. & B. 551.....	1180, 1182, 1183, 1196
Barker v. Elkins, 1 Johns. Ch. 465.....	1077
Barker v. Jones, 62 N. H. 497, 13 Am. St. Rep. 413.....	1198
Barker v. Pullman's Palace Car Co., 124 Fed. 555.....	1139
Barker v. Pullman Co. (C. C. A.), 134 Fed. 70.....	1148
Barker v. Swain, 4 Jones Eq. 220.....	95
Barker v. Walters, 8 Beav. 92.....	1165
Barker v. Wayne Circuit Judge, 117 Mich. 325, 75 N. W. 886..	281
Barkeley v. Reay, 2 Hare, 306.....	159
Barley v. Gittings, 15 App. Dec. 427.....	260, 266, 439
Barlow v. Britton, 70 Miss. 427, 12 South. 460.....	1399
Barnard v. Lee, 97 Mass. 92	1337, 1341
Barnard v. Pope, 14 Mass. 434, 7 Am. Dec. 225.....	1198
Barnes v. Bamberger, 196 Pa. St. 123, 46 Atl. 303.....	66, 97
Barnes v. Barnes, 161 Mass. 381, 37 N. E. 379.....	1226
Barnes v. Benoit, 19 Wis. 93.....	754
Barnes v. Jones, 91 Ind. 161..	145, 146
Barnes v. Luther, 77 Hun, 234, 28 N. Y. Supp. 400.....	1207
Barnes v. Lynch, 151 Mass. 510, 21 Am. St. Rep. 470, 24 N. E. 783	1203
Barnes v. Milne, 1 Rich. Eq. Cas. 459, 24 Am. Dec. 422.....	1112
Barnes v. New York, 27 Hun, 236.....	74
Barnes v. Teague, 1 Jones Eq. 277, 62 Am. Dec. 200.....	1354
Barnes v. Wood, L. R. 8 Eq. 424.....	1369
Barnett v. Cline, 60 Ill. 205.....	1227
Barnett v. East Tenn. V. & G. R. Co. (Tenn. Ch. App.), 48 S. W. 817.....	1428
Barnett v. Moore, 20 Misc. Rep. 518, 46 N. Y. Supp. 668.....	273
Barney v. Baltimore, 6 Wall. 280, 18 L. ed. 825.....	1200, 1202
Barnstein v. Hamilton, 49 N. Y. Supp. 932, 26 App. Div. 206..	80
Barnwell v. Wofford, 67 Ga. 50.....	202
Baron v. Korn, 127 N. Y. 224, 27 N. E. 804.....	851, 852
Baron de Worms v. Mellier, L. R. 16 Eq. 554.....	1075
Barr v. Essex Trade Council, 53 N. J. Eq. 101, 30 Atl. 881..	1018, 1030, 1033, 1037

Barr v. Lamaster , 48 Neb. 114, 66 N. W. 1110, 32 L. R. A. 451..	1184
Barr v. Post , 59 Neb. 361, 80 Am. St. Rep. 680, 80 N. W. 1041..	
.....	1103, 1104
Barret v. Blagrove , 5 Ves. 555.....	808
Barret v. Blagrove , 6 Ves. 104.....	513
Barret v. Geisinger , 179 Ill. 240, 53 N. E. 576, 578.....	1286
Barrett v. Fish , 72 Vt. 18, 82 Am. St. Rep. 914, 47 Atl. 174, 51	
L. R. A. 754.....	988
Barrett v. Mt. Greenwood Cemetery Assn. , 159 Ill. 385, 50 Am.	
St. Rep. 168, 42 N. E. 891, 31 L. R. A. 109.....	794, 896
Barrett v. Tewksbury , 9 Cal. 13.....	1147
Barrick v. Horner , 78 Md. 253, 44 Am. St. Rep. 283, 27 Atl.	
1111.....	568
Barringer v. Ryder , 119 Iowa, 121, 93 N. W. 56.....	31
Barrington v. Horn , 5 Vin. Abr. 547, pl. 35, 2 Eq. Cas. Abr. 17,	
pl. 7	1273
Barroll v. Foreman , 56 Md. 675, 39 Atl. 273.....	97
Barron v. Mullin , 21 Minn. 374.....	399
Barrow v. Barrow , 18 Beav. 5.....	1140
Barrow v. Davis , 46 Mo. 394.....	710
Barrow v. Rhinelander , 1 Johns. Ch. (N. Y.) 550.....	1516
Barrow v. Richard , 8 Paige, 351, 35 Am. Dec. 713.....	503
Barry v. Barry , 1 Jacob & W. 651.....	805, 807
Barry v. Rownd , 119 Iowa, 105, 93 N. W. 67.....	1139
Barry v. Stevens , 31 Beav. 258.....	1518
Barth v. Backus , 140 N. Y. 230, 37 Am. St. Rep. 545, 35 N. E.	
425, 23 L. R. A. 47.....	446, 447
Bartlett v. Ambrose , 78 Fed. 839, 24 C. C. A. 397.....	40
Bartlett v. Bartlett , 103 Mich. 293, 61 N. W. 500.....	1347, 1351
Bartlett v. Cicero Light etc. Co. , 177 Ill. 68, 69 Am. St. Rep.	
206, 52 N. E. 339, 42 L. R. A. 715.....	383, 411
Bartlett v. L. Bartlett & Son Co. , 116 Wis. 450, 93 N. W. 473..	556
Bartlett v. Moyers , 83 Md. 715, 42 Atl. 204.....	864
Bartlett v. The Sultan , 23 Fed. 257.....	88
Bartlett v. West Metropolitan Tramways Co. , [1893] 3 Ch. 437.	231
Bartlette v. Crittenden , 5 McLean, 32, Fed. Cas. No. 1076..	
.....	987, 988
Barto v. Board of Supervisors , 135 Cal. 494, 67 Pac. 758.....	602
Barton v. Barbour , 104 U. S. 126, 26 L. ed. 673.....	
.....	329, 330, 331, 333, 334
Barton v. Barton , 80 Ky. 212	1430
Barton v. De Wolf , 108 Ill. 195.....	1269
Barton v. Drake , 21 Minn. 299.....	1227
Barton v. Lovejoy , 56 Minn. 380, 45 Am. St. Rep. 482, 57 N. W.	
935.....	1534
Barton v. Union Cattle Co. , 28 Neb. 350, 26 Am. St. Rep. 340,	
44 N. W. 454, 7 L. R. A. 457.....	869, 965
Bascombe v. Beckwith , L. R. 8 Eq. 100.....	1303
Basey v. Gallagher , 20 Wall. 670, 22 L. ed. 452.....	969
Baskett v. Tippin , 23 Ky. Law Rep. 1895, 66 S. W. 374.....	955
Bass v. Fort Wayne , 121 Ind. 389, 23 N. E. 259.....	766
Bass v. Metropolitan West Side El. R. Co. , 82 Fed. 857, 27 C.	
C. A. 147, 39 L. R. A. 711.....	763, 814
Basselin v. Pate , 30 Misc. Rep. 368, 63 N. Y. Supp. 653.....	620
Bassett v. Leslie , 123 N. Y. 396, 25 N. E. 386.....	65, 77, 95
Bassett v. Salisbury etc. Mills , 47 N. H. 426.....	824, 860, 902

Bassett v. Salisbury Mfg. Co., 43 N. H. 569, 82 Am. Dec. 179..	898
Basting v. Ankeny, 64 Minn. 133, 66 N. W. 266.....	361
Batemen v. Butler, 19 Colo. 547, 36 Pac. 548.....	44
Bateman v. Hollinger (N. J. Eq.), 30 Atl. 1107.....	553
Bateman v. Reitler, 19 Colo. 547, 36 Pac. 548.....	48
Bateman v. Superior Court. 54 Cal. 285.....	154
Bateman v. Willoe, 1 Schoales & L. 201, 204, 206.....	1073
Bates v. Plonsky, 62 How. Pr. 429.....	1430
Bates v. Ruddick, 2 Iowa, 423, 65 Am. Dec. 774.....	1486
Bates v. Wiggin, 37 Kan. 44, 1 Am. St. Rep. 234, 14 Pac. 442..	291
Bates Mach. Co. v. Bates, 87 Ill. App. 225.....	1312
Bathmann v. Bathmann, 79 Hun, 447, 29 N. Y. Supp. 959....	152
Bathurst v. Burden, 2 Bro. C. C. 64.....	803, 806
Batson v. Findley, 52 W. Va. 343, 43 S. E. 142.....	263, 264
Battalion Westerly Rifles v. Swan, 22 R. I. 333, 84 Am. St. Rep. 849, 47 Atl. 1090.....	1264
Battersea, Lord, v. Commissioners etc. London.....	959
Batterton v. Chiles, 12 B. Mon. 354, 54 Am. Dec. 539.....	1202
Battery Park Bank v. Western Carolina Bank, 127 N. C. 432, 37 S. E. 461.....	288, 289, 290, 294, 295, 1453
Battishill v. Reed, 18 Com. B. 696.....	945
Battle v. Davis, 66 N. C. 252.....	105, 107, 354, 357
Bauchman v. Heinselman, 180 Ill. 251, 54 N. E. 313.....	767
Bauer v. Distillerie De La Liqueur Benedictine, 120 Fed. 74, 56 C. C. A. 480.....	994
Bauer v. Gribbel, 2 App. Div. 80, 37 N. Y. Supp. 609.....	504
Bauer v. Lumaghi Coal Co., 209 Ill. 316, 70 N. E. 634.....	1336
Bauer v. Order of Carthusian Monks, 120 Fed. 78, 56 C. C. A. 484.....	994
Bauer v. Siegert, 120 Fed. 81, 56 C. C. A. 487.....	994
Baughman v. Reed, 75 Cal. 319, 7 Am. St. Rep. 170, 17 Pac. 222.....	153
Baughman v. Superior Court, 72 Cal. 572, 14 Pac. 207.....	435
Baum, Appeal of, 113 Pa. St. 58, 4 Atl. 461.....	1265
Baumeister v. Silver, 98 Md. 418, 56 Atl. 825.....	1321, 1324
Baumgartner v. Bradt, 207 Ill. 345, 69 N. E. 912.....	914
Baumgartner v. Broadway, 77 N. C. 8.....	524
Baumhoff v. Oklahoma City E. & G. & P. Co. (Okla.), 77 Pac. 40.....	1295
Bausman v. Denney, 73 Fed. 69.....	372
Baya v. Lake City, 44 Fla. 491, 33 South. 400.....	836
Bausman v. Kelley, 38 Minn. 197, 8 Am. St. Rep. 661, 36 N. W. 333.....	1233
Baxendale v. Seale, 19 Beav. 601.....	1305
Baxter v. Conolly, 1 Jacob & W. 576.....	1274
Baxter v. Moore, 5 Leigh, 219.....	1475, 1477
Baxter v. Moses, 77 Me. 465, 52 Am. Rep. 783.....	1432
Bayard v. Hoffman, 4 Johns. Ch. 450.....	1415, 1452
Bayless v. Orne, 1 Freem. Ch. (Miss.) 173.....	552
Bayley v. Bayley (N. J. Eq.), 57 Atl. 271.....	1436
Bayne v. Brewer Pottery Co., 82 Fed. 391.....	276, 277, 284
Bayne v. Brewer Pottery Co., 90 Fed. 754.....	372
Bay State Iron Co. v. Goodall, 39 N. H. 223, 75 Am. Dec. 219..	1413
Beach v. Crane, 2 N. Y. 86, 97, 49 Am. Dec. 369.....	858
Beach v. Macon Grocery Co., 125 Fed. 513, 60 C. C. A. 557.....	431
Beach v. Sterling etc. Co., 54 N. J. Eq. 65, 33 Atl. 286.....	966

Beadel v. Perry , L. R. 3 Eq. 456, 15 L. T., N. S., 345, 15 Week. Rep. 120.....	960, 961
Beadel v. Perry , 19 L. T., N. S., 760, 17 Week. Rep. 185.....	961
Beal v. Brown , 13 Allen, 114.....	1479
Beal v. Chase , 31 Mich. 490.....	523
Beale v. Blake , 45 N. J. Eq. 668, 18 Atl. 300.....	1252
Beall v. Stokes , 95 Ga. 357, 22 S. E. 637.....	139
Beals v. Case , 138 Mass. 138.....	504
Bean v. Everett , 21 Ky. Law Rep. 1790, 56 S. W. 403.....	1132
Bean v. Heron , 65 Minn. 64, 67 N. W. 805.....	196
Bear v. Stahl , 61 Mich. 203, 28 N. W. 69.....	1170
Beard v. Arbuckle , 19 W. Va. 145.....	260
Beard v. Dennis , 6 Ind. 200, 63 Am. Dec. 380.....	523, 525
Bearden v. Benner , 120 Fed. 690.....	1200
Beardsley Scythe Co. v. Foster , 36 N. Y. 561.....	1435
Beaser v. City of Ashland , 89 Wis. 28, 61 N. W. 77.....	757
Beasley v. Coggins (Fla.), 37 South. 213.....	1430
Beaton v. Tarrant (1902), 102 Ill. App. 124.....	1013, 1014, 1022, 1035
Beattie v. Callanan , 67 App. Div. 14, 73 N. Y. Supp. 518.....	1013
Beatty v. Coble , 142 Ind. 329, 41 N. E. 590.....	497, 524, 526
Beatty v. Dixon , 56 Cal. 622.....	1175
Beatty v. Kurtz , 2 Pet. 566, 7 L. ed. 521.....	828, 829, 936
Beauchamp v. Kankakee Co. , 45 Ill. 274.....	601
Beaufort, Duke of, v. Berty , 1 P. Wms. 703.....	138
Beaumont v. Beaumont , 166 Pa. St. 615, 31 Atl. 336.....	108
Beaver v. Slanker , 94 Ill. 175.....	1505
Beaver Lumber Co. v. Eccles , 43 Or. 400, 99 Am. St. Rep. 759, 73 Pac. 201.....	816
Bechtel v. Sheaffer , 117 Pa. St. 555, 562, 11 Atl. 889.....	91
Beck v. Allison , 56 N. Y. 366, 15 Am. Rep. 430.....	1276
Beck v. Burdett , 1 Paige, 305, 19 Am. Dec. 436.....	1452
Beck v. Railway Teamsters' Protective Union , 118 Mich. 497, 74 Am. St. Rep. 421, 77 N. W. 13, 42 L. R. A. 407.....	798, 1013, 1031, 1055, 1056, 1057
Beck v. Stephani , 9 How. Pr. 193.....	96
Becker v. Farwell , 25 Ill. App. 432.....	1484
Becker v. Lebanon & M. Ry. Co. , 188 Pa. St. 484, 41 Atl. 612, 43 Wkly. Not. Cas. 229.....	545, 860, 907
Becker v. Metropolitan El. R. Co. , 131 N. Y. 509, 30 N. E. 499... 781	
Becker v. Schwerdtle , 141 Cal. 386, 74 Pac. 1029.....	1158
Becker v. Torrance , 31 N. Y. 631.....	290, 1453
Beckhan v. Brown , 19 Ky. Law Rep. 519, 40 S. W. 684.....	889
Beckley v. Munson , 22 Conn. 299.....	1479
Beck Lumber Co. v. Rupp , 188 Ill. 562, 80 Am. St. Rep. 190, 59 N. E. 429.....	1223
Beckwith v. Howard , 6 R. I. 1.....	514, 906
Bedell v. Bedell , 3 Hun, 580, 6 Thomp. & C. 324.....	1163
Bedell v. Hoffman , 2 Paige, 199.....	65, 98, 99
Bedford v. Trustees , 2 Mylne & K. 552.....	508
Bedford-Bowling Green Stone Co. v. Oman , 115 Ky. 369, 73 S. W. 1038.....	1062
Bedford Springs Co. v. McMeen , 161 Pa. St. 639, 29 Atl. 99... 551	
Beebe v. Board of Supervisors , 64 Hun, 377, 19 Supp. 629.....	619
Beebe v. George H. Beebe Co. , 64 N. J. L. 497, 46 Atl. 168.....	375
Beebe v. Griffing , 14 N. Y. 238.....	1194, 1193
Beebe v. Robinson , 52 Ala. 66.....	589

Beecher v. Beecher, 43 Conn. 556.....	1196
Beecher v. Bininger, 1 Blatchf. 170, Fed. Cas. No. 1222.....	110, 112
Beecher v. Marquette etc. Co., 40 Mich. 307.....	170
Beecher's Estate, In re, 19 N. Y. Supp. 971.....	364
Beedle v. Bennett, 122 U. S. 71, 7 Sup. Ct. 1090, 30 L. ed 1074....	978
Beekman v. Third Ave. etc. Co., 13 App. Div. 279, 43 N. Y. Supp. 174.....	922
Beeler's Heirs v. Bullitt's Heirs, 10 Ky. (3 A. K. Marsh.) 280, 13 Am. Dec. 161.....	1183
Beeman v. Kitzman, 124 Iowa, 86, 99 N. W. 171.....	1168
Beer v. Canary, 2 App. Div. 518, 38 N. Y. Supp. 23.....	530
Beers v. Wabash H. L. & P. R. Co., 34 Fed. 244.....	303, 322
Beeson v. City of Chicago, 75 Fed. 880.....	774
Beggs v. Edison El. L. & I. Co., 96 Ala. 295, 11 South. 381.....	1519
Begole v. Hershey, 86 Mich. 130, 48 N. W. 790.....	1230
Beidler v. Crane, 135 Ill. 92, 25 Am. St. Rep. 349, 25 N. E. 655....	1414
Beidler v. Kochersperger, 171 Ill. 563, 49 N. E. 716.....	683
Beith v. Porter, 119 Mich. 365, 75 Am. St. Rep. 402, 78 N. W. 336..	1452
Belding v. Meloche, 113 Mich. 223, 71 N. W. 592.....	197
Belington & N. R. Co. v. Town of Alston, 54 W. Va. 597, 46 S. E. 612.....	602, 638
Belknap v. Belknap, 2 Johns. Ch. 463, 7 Am. Dec. 548.....	576
Belknap v. Trimble, 3 Paige, 577.....	869, 970
Belknap Sav. Bank v. Lamar Land etc. Co., 28 Colo. 326, 64 Pac. 212.....	261, 271, 272, 403
Bell v. American Protective League, 163 Mass. 558, 47 Am. St. Rep. 481, 40 N. E. 857, 28 L. R. A. 452.....	286
Bell v. Blount, 11 N. C. 384, 15 Am. Dec. 526.....	884, 890
Bell v. Campbell, 123 Mo. 1, 45 Am. St. Rep. 505, 25 S. W. 359..	1162
Bell v. Cunningham, 1 Sumn. 89, Fed. Cas. No. 1246.....	1111
Bell v. Hanover Nat. Bank, 57 Fed. 822.....	366
Bell v. Hunt, 3 Barb. Ch. 391.....	65
Bell v. Keepers, 39 Kan. 105, 17 Pac. 785.....	1161
Bell v. Maish, 137 Ind. 226, 36 N. E. 358, 1118.....	688
Bell v. McConkey, 82 Va. 176.....	1491
Bell v. Murray, 13 Colo. App. 217, 57 Pac. 488.....	1132
Bell v. Ohio L. & T. Co., 1 Biss. 260, Fed. Cas. No. 1260.....	326
Bell v. Rochester, 61 N. Y. St. Rep. 721, 30 N. Y. Supp. 365....	620
Bell v. Shibley, 33 Barb. 614.....	366
Bell v. Williams, 1 Head, 229.....	1113, 1121
Bellamy v. Wells, 60 L. J. Ch. D. 156	870
Bellamy v. Woodson, 4 Ga. 175, 48 Am. Dec. 221	1077
Bell County Coke & Imp. Co. v. Board of Trustees etc., 19 Ky. Law Rep. 789, 42 S. W. 92.....	699
Bellevue Imp. Co. v. Village of Bellevue, 39 Neb. 876, 58 N. W. 446	716
Bellew v. New York, W. & C. Traction Co., 47 App. Div. 447, 62 N. Y. Supp. 242	782
Belmont v. Erie Ry. Co., 52 Barb. (N. Y.) 637	209
Belmont Nail Co. v. Columbia Iron etc. Co., 46 Fed. 8.....	228
Belton, In re, 47 La. Ann. 1614, 18 South. 642, 30 L. R. A. 648..	225
Bement v. La Dow, 66 Fed. 185	1161
Bement v. Ohio V. B. & T. Co., 99 Ky. 109, 59 Am. St. Rep. 445, 35 S. W. 139	1097
Bemeson v. Bill, 62 Ill. 408.....	279
Bemis v. McCloud (Neb.), 97 N. W. 828.....	718

Bender v. Sherwood , 15 How. Pr. 258	82
Bender v. Van Allen , 28 Misc. Rep. 304, 59 N. W. Supp. 885....	152
Benecke v. Welsh , 168 Mo. 267, 67 S. W. 604	1225
Benedict v. Lynch , 1 Johns. Ch. 370.....	1338, 1339
Benedict v. St. Joseph & W. R. Co. , 19 Fed. 173	253
Benedict v. Torrent , 83 Mich. 181, 21 Am. St. Rep. 589, 47 N. W. 129, 11 L. R. A. 278	1184
Benepe-Owenhouse Co. v. Scheidegger (Mont.) , 80 Pac. 1024..	262
Benjamin v. Brooklyn Union El. R. Co. , 120 Fed. 428	789
Benn v. Chehalis County , 11 Wash. 134, 39 Pac. 365.....	746
Bennallack v. Richards , 125 Cal. 427, 58 Pac. 651	115, 116, 154
Benner v. Kendall , 21 Fla. 584	1235
Bennet v. Fowler , 2 Beav. 302	1368
Bennett v. Buchanan , 3 Ind. 47	1479
Bennett v. Chandler , 199 Ill. 97, 64 N. E. 1052	1501
Bennett v. Dowling , 22 Tex. 660	1479
Bennett v. McGuire , 58 Barb. 625	1408
Bennett v. Northern Pac. R. Co. , 17 Wash. 334, 50 Pac. 496 ..	339
Bennett v. Smith , 108 Ga. 466, 34 S. E. 156	146
Bennett v. Sweet , 171 Mass. 600, 51 N. E. 183	1417
Bennett v. Thorne (Wash.) , 78 Pac. 936	1472
Bensley v. Mountain etc. Co. , 13 Cal. 306, 73 Am. Dec. 575. 833, 836	
Benson v. Anderson , 10 Utah, 135, 37 Pac. 256	1083, 1098
Benson v. Lamb , 9 Beav. 502, 507	1339
Benson v. Shotwell , 87 Cal. 49, 60, 25 Pac. 249	1244
Bentley v. Harris , 10 R. I. 434, 14 Am. Rep. 695..	1522, 1530
Bentley v. Long Dock Co. , 1 McCart. 489.....	1216
Benton v. Ward , 47 Fed. 253.	1157
Benwell v. Mayor etc. of Newark , 55 N. J. Eq. 260, 36 Atl. 668..	1271
Beresford v. Driver , 14 Beav. 387, 16 Beav. 134	1265
Bergen v. Little , 41 N. J. Eq. 18, 2 Atl. 614	375
Berghoffen v. City of New York , 31 Misc. Rep. 205, 64 N. Y. Supp. 1082	620
Berkey v. St. Paul Nat. Bank , 54 Minn. 448, 56 N. W. 53	44
Berks County v. Reading City etc. Co. , 167 Pa. St. 102, 31 Atl. 474, 36 Wkly. Not. Cas. 173	930
Bernan v. Rufford , 6 Eng. L. & Eq. 106, 1 Sim. (N. S.) 550	542
Bernard v. Barney M. Co. , 147 Mass. 356, 17 N. E. 887.....	1426
Berney v. Sewell , 1 Jacob & W. 647.....	165, 182
Bernstein v. Hamilton , 49 N. Y. Supp. 932, 26 App. Div. 206....	81
Berry v. American Cent. Ins. Co. , 132 N. Y. 49, 28 Am. St. Rep. 548, 30 N. E. 254	1165
Berry v. Brett , 6 Bosw. 627	371
Berry v. Frisbie (Ky.) , 86 S. W. 558	1310
Berry v. Keen , [1882] 51 L. J. (Ch.) 912	155
Besley v. Lawrence , 11 Paige, 581	1399
Best v. Drake , 11 Hare, 369	832
Best v. Grolapp (Neb.) , 96 N. W. 641.....	1358
Best v. Schermier , 6 N. J. Eq. 154	171
Bethell v. Bethell , 92 Ind. 318	30
Bettle v. Republic Sav. & L. Assn. , 63 N. J. Eq. 578, 53 Atl. 11..	244
Bettman v. Harness , 42 W. Va. 433, 26 S. E. 271, 36 L. R. A. 566	484, 822, 825, 843, 848
Beveridge v. Hewitt , 8 Ill. App. 467.....	1107
Beverly v. Brooke , 4 Gratt. (Va.) 187, 208	106, 114, 184, 287
Beville v. Boyd , 16 Tex. Civ. App. 491, 41 S. W. 670.....	1509
Bevins v. Eisman , 21 Ky. Law Rep. 1772, 56 S. W. 410.....	1443

Beyer v. Town of Crandon , 98 Wis. 306, 73 N. W. 771	629
Bibber-White Co. v. White River Val. E. R. Co. , 107 Fed. 176	305, 307
Bibber-White Co. v. White River Val. E. R. Co. , 110 Fed. 473..	399
Bibber-White Co. v. White River Val. E. R. Co. , 53 C. C. A. 282, 115 Fed. 786	405
Bickley v. Schlag , 46 N. J. Eq. 533, 20 Atl. 250	1465, 1466
Bickmore Gall Cure Co. v. Karns (C. C. A.), 134 Fed. 833.....	994
Biddler v. Wayne Waterworks Co. , 190 Pa. St. 94, 42 Atl. 380 ..	788
Bidlack v. Mason , 26 N. J. Eq. 230	439
Bidwell v. Huff , 103 Fed. 362	664, 1427
Bieler v. Dreher , 129 Ala. 384, 30 South. 22 ..	1149
Bien v. Bixby , 18 Misc. Rep. 415, 41 N. Y. Supp. 433.....	373
Bienville W. S. Co. v. Mobile , 112 Ala. 260, 20 South. 742, 57 Am. St. Rep. 28, 33 L. R. A. 59.....	532
Bierce v. James , 87 Tenn. 538, 553, 11 S. W. 788	1187, 1192
Bierne v. Mann , 5 Leigh, 364.....	1077
Bigbee v. Summerour , 101 Ga. 201, 28 S. E. 642	158
Bigelow v. Armes , 108 U. S. 10, 1 Sup. Ct. 33, 27 L. ed. 631..	1356
Bigelow v. Bigelow , 95 Me. 17, 49 Atl. 49	1361
Bigelow v. Congregational Society , 11 Vt. 283.....	1417
Bigelow v. Hartford Bridge Co. , 14 Conn. 565, 36 Am. Dec. 502	927, 932
Biggs v. Kouns , 7 Dana, 405, 411	96
Bigham v. Kistler , 114 Ga. 453, 40 S. E. 303	1093
Bigler's Exr. v. Penn. Canal Co. , 177 Pa. St. 28, 35 Atl. 112. 764, 768	
Biglow v. Biglow , 39 App. Div. 103, 56 N. Y. Supp. 794.....	1197
Bignold v. Audland , 11 Sim. 23.....	80
Big Rapids v. Comstock , 65 Mich. 78, 31 N. W. 811.....	907
Big Six Development Co. v. Mitchell (C. C. A.), 138 Fed. 279..	1227
Billings v. Aspen Min. & S. Co. , 51 Fed. 338, 2 C. C. A. 252, 10 U. S. App. 1	35, 37, 61, 1164
Bills v. Belnap , 36 Iowa, 583	763
Bimson v. Bultman , 3 App. Div. 198, 38 N. Y. Supp. 209.....	503
Bingham v. Disbrow , 37 Barb. 24	361
Bingham v. Salene , 15 Or. 208, 3 Am. St. Rep. 152, 14 Pac. 523..	942
Binghamton Bridge , 3 Wall. 51, 18 L. R. A. 137	1002
Binghamton General Electric Co. , In re, 143 N. Y. 263, 38 N. E. 297	287, 552
Binns v. La Forge , 191 Ill. 598, 61 N. E. 382	1421
Binswanger v. Henninger , 1 Alaska, 509	803, 818
Birch-Wolfe v. Birch , L. R. 9 Eq. 683.....	807, 815
Bird , In re, L. R. 22 Ch. D. 604.....	298
Bird v. Hall , 30 Mich. 374	1183
Bird v. Magowan (N. J. Eq.), 43 Atl. 278	1424
Bird v. Wilmington & M. R. Co. , 8 Rich. Eq. (S. C.) 46, 64 Am. Dec. 739.....	764, 859
Birdsall v. Colie , 10 N. J. Eq. 63	144
Birdsall v. Coolidge , 93 U. S. 64, 23 L. ed. 802.....	977
Birmingham v. Cheetham , 19 Wash. 657, 54 Pac. 37.....	581
Birmingham & D. L. Co. , In re, [1893] 1 Ch. 343	504
Birmingham & L. J. R. Co. , In re, 18 Ch. D. 155.....	249
Birmingham Min. etc. Co. v. Mutual Loan & Trust Co. , 96 Ala. 364, 11 South. 368	547
Birmingham Nat. Bank v. Roden , 97 Ala. 404, 11 South. 883	1395, 1396

Birmingham Ry. & Elec. Co. v. Birmingham Traction Co. , 121 Ala. 475, 25 South. 777	768
Birmingham Shoe Co. v. Torrey , 121 Ala. 89, 25 South. 763. 1410	
Birmingham Traction Co. v. Birmingham Ry. & Elec. Co. , 119 Ala. 129, 24 South. 368	762, 766, 835
Birmingham Traction Co. v. Birmingham Ry. & Elec. Co. , 119 Ala. 137, 24 South. 502, 43 L. R. A. 233.....	770, 822
Birmingham Traction Co. v. Southern Bell etc. Co. , 119 Ala. 144, 24 South. 731	830, 1065, 1066
Bishop v. Baisley , 28 Or. 120, 41 Pac. 936.....	843, 859
Bishop v. Banks , 33 Conn. 118, 87 Am. Dec. 197	870
Bishop v. Day , 13 Vt. 81, 37 Am. Dec. 582	1490
Bishop v. McKillican , 124 Cal. 321, 71 Am. St. Rep. 68, 57 Pac. 76.....	355
Bishop v. Moorman , 98 Ind. 1, 49 Am. Rep. 731. 1132, 1225, 1238, 1239	
Bishop v. Smith , (N. J.), 57 Atl. 874.....	1477, 1482, 1487
Bishop v. Woodward , 103 Ga. 281, 29 S. E. 968.....	1168
Bishop of London v. Webb , 1 P. Wms. 527	805, 812
Bishop of Salisbury v. Philips , 1 Salk. 43	1188
Bishop of Winchester's Case , 1 Rolle Abr. 380	813
Bissell v. Beckwith , 33 Conn. 357	1090
Bissell v. Kellogg , 60 Barb. (N. Y.) 629.....	1223
Bissell Chilled Plow Works v. T. M. Bissell Plow Co. , 121 Fed. 357	40, 993, 998
Bisson v. Curry , 35 Iowa, 72	261
Bitting, Appeal of , 105 Pa. St. 517	880
Bitting v. Ten Eyck , 85 Ind. 357.....	107
Bitzeman v. Bitzeman , [1895] 2 Ch. 474	53
Black v. Allen , 56 Fed. 764.....	984, 985
Black v. Boyd , 50 Ohio St. 46, 33 N. E. 207.....	1518
Black v. Commissioners of Buncombe County , 129 N. C. 121, 39 S. E. 818.....	606
Black v. Common Council of City of Detroit , 119 Mich. 571, 78 N. W. 660.....	610, 630, 632
Black v. Delaware & R. C. Co. , 22 N. J. Eq. 415.....	543
Black v. Delaware & R. C. Co. , 24 N. J. Eq. 455.....	541
Black v. Good Intent etc. Co. , 31 La. Ann. 497.....	1069
Black v. Jackson , 177 U. S. 349, 20 Sup. Ct. 648, 44 L. ed. 801, reversing 6 Okla. 751 52 Pac. 406.....	851
Black v. Philadelphia etc. Co. , 58 Pa. St. 249.....	932
Black v. Washington , 65 Miss. 60, 3 South. 140.....	1203
Blackburn v. Randolph , 33 Ark. 119.....	1143
Blackett v. Bates , [1865] L. R. Ch. App. 177.....	1279
Black Hills & N. W. R. Co. v. Tacoma Mill Co. , 129 Fed. 312, 63 C. C. A. 544.....	768
Blackledge v. Blackledge (Iowa), 91 N. W. 818.....	56
Black Lick Mfg. Co. v. Saltsburg Gas Co. , 139 Pa. St. 448, 21 Atl. 432.....	1069
Blackman v. Wright , 96 Iowa, 541, 65 N. W. 843.....	1160, 1161
Black Point Syndicate , In re, 79 L. T., N. S., 658.....	850
Blackwell v. Hatch , 13 Okla. 169, 73 Pac. 933.....	1437
Blackwood v. Van Vleet , 11 Mich. 252.....	811
Blain v. Brady , 64 Md. 373, 1 Atl. 609.....	864
Blain v. Harrison , 11 Ill. 384.....	1171
Blair v. Boswell , 37 Or. 168, 61 Pac. 341.....	889
Blair v. Porter , 13 N. J. Eq. 267.....	68

Blair v. St. Louis H. & K. R. Co., 20 Fed. 348.....	250, 397
Blaisdell v. Bohr, 68 Ga. 56.....	1397
Blake v. Blake, 118 N. C. 575, 24 S. E. 424.....	1191
Blake v. Dorgan, 1 G. Greene (Iowa), 537.....	1526
Blake v. Francis-Valentine Co., 89 Fed. 691.....	1079
Blake v. McClung, 172 U. S. 239, 19 Sup. Ct. 165, 43 L. ed. 432..	454
Blake v. Pine Mountain Iron etc. Co., 76 Fed. 624, 43 U. S. App. 490, 22 C. C. A. 430.....	1157
Blakeley v. Biscoe, 1 Hemp. 114, Fed. Cas. No. 18,239.....	1520
Blakemore v. Glamorganshire etc. Co., 1 Mylne & K. 154.....	
.....	840, 919, 920, 955, 1068
Blakemore v. Wise, 95 Va. 269, 64 Am. St. Rep. 781, 28 S. E. 332.....	1402
Blakeney v. Dufour, 15 Beav. 40.....	142, 280
Blakeslee v. Murphy, 44 Conn. 188.....	1116, 1121
Blakey v. National Mfg. Co., 95 Fed. 136, 37 C. C. A. 27.....	983
Blanc v. Murray, 36 La. Ann. 162, 51 Am. Rep. 7.....	870, 871
Blanc v. Paymaster Min. Co., 95 Cal. 524, 29 Am. St. Rep. 149, 30 Pac. 765.....	1443
Blanchard v. Barre (Vt.), 60 Atl. 970.....	743
Blanchard v. Detroit etc. Co., 31 Mich. 43, 18 Am. Rep. 142....	1280
Blanchard v. Doering, 23 Wis. 200.....	860
Blanchard v. Tvler, 12 Mich. 339, 86 Am. Dec. 57.....	1246
Blanchette v. Farsch (S. D.), 99 N. W. 79.....	1404
Blank v. Manufacturing Co., 3 Wall Jr. 196, Fed. Cas. No. 1532..	978
Blanton v. Bostie, 126 N. C. 418, 35 S. E. 1035.....	1497, 1512
Blatchford v. Conner, 40 N. J. Eq. 205, 1 Atl. 16, 17 Atl. 354....	1252
Bleakley's Appeal, 66 Pa. St. 187.....	1505
Plessing v. City of Galveston, 42 Tex. 641.....	740
Blindell v. Hogan (C. C.), 54 Fed. 40 (1893).....	1037
Bliss v. Anderson, 31 Ala. 612, 70 Am. Dec. 511.....	542
Bliss v. Brooklyn, 4 Fish. Pat. Cas. 596, Fed. Cas. No. 1544....	980
Bliss v. French, 117 Mich. 538, 76 N. W. 73.....	96, 97
Bliss v. Hornthall, 33 App. Div. 225, 53 N. Y. Supp. 493.....	1430
Bliss v. Prichard, 67 Mo. 181.....	38
Bliss v. Smith, 34 Beav. 508.....	1518
Bloch v. Bloch, 42 Misc. Rep. 278, 86 N. Y. Supp. 1047.....	430
Block v. Donovan (N. Dak.), 99 N. W. 72.....	1336
Block v. Estes, 92 Mo. 318, 4 S. W. 731.....	360
Blodgett v. Northwestern El. R. Co., 80 Fed. 601, 26 C. C. A. 21..	774
Blondell v Consolidated Gas Co., 89 Md. 732, 43 Atl. 817, 46 L. R. A. 187.....	832
Blondheim v. Moore, 11 Md. 365.....	109, 110, 114, 199, 262, 272
Blood v. Blood, 110 Mass. 545.....	1518, 1522
Blood v. Manchester Elect. Lt. Co., 68 N. H. 340, 39 Atl. 335.....	610, 616
Bloodgood v. Clark, 4 Paige (N. Y.), 574.....	188, 191, 194
Bloomer v. Spittle, L. R. 13 Eq. 427.....	1145
Bloom v. Koch (N. J.), 50 Atl. 621.....	941
Bloss v. Hull, 27 W. Va. 503.....	1120
Blount v. Societe Anonyme du Filtre, 53 Fed. 98, 6 U. S. App. 335, 3 C. C. A. 455.....	482
Bloxham v. Consumers' etc. R. R. Co., 36 Fla. 519, 51 Am. St. Rep. 44, 18 South. 444, 29 L. R. A. 507.....	674
Bohe v. Watson, 59 Miss. 619.....	73, 80, 96, 97
Blue Jacket Co. v. Scherr, 50 W. Va. 533, 40 S. E. 514....	647, 747, 743

Blum v. Van Vechten , 92 Wis. 378, 66 N. W. 507.....	308, 336
Blumenthal v. Brainerd , 38 Vt. 402, 91 Am. Dec. 350.....	336
Blundell v. Brettargh , 17 Ves. 232, 240.....	1327
Bluntzer v. Hirsch , 32 Tex. Civ. App. 585, 75 S. W. 326.....	1533
Bly v. Edison etc. Co. , 172 N. Y. 1, 64 N. E. 745, 58 L. R. A. 500..	923
Boardman v. Marshalltown Grocery Co. , 105 Iowa, 445, 75 N. W. 343.....	550
Boardman v. Meriden Britannia Co. , 35 Conn. 402, 95 Am. Dec. 270.....	990
Boardman v. Paige , 11 N. H. 431.....	1482, 1487, 1489
Board of Commissioners v. Dailey , 115 Ind. 360, 17 N. E. 619....	689
Board of Commissioners v. Hall , 70 Ind. 469.....	688
Board of Commissioners of Henry County v. Gillies , 138 Ind. 667, 38 N. E. 40.....	604, 609, 613
Board of Commissioners of Lincoln Co. v. Bryant , 7 Kan. App. 252, 53 Pac. 775.....	695
Board of Commissioners of Perry County v. Gardner , 155 Ind. 165, 57 N. E. 908.....	606
Board of Commissioners of Owens Co. v. Spangler , 159 Ind. 575, 65 N. E. 743.....	688
Board of Commissioners of Wayne Co. v. Dickinson , 153 Ind. 682, 53 N. E. 929.....	629
Board of Councilmen of City of Frankfort v. Mason & Foard Co. , 100 Ky. 48, 37 S. W. 290.....	700
Board of Education v. Arnold , 112 Ill. 11.....	598
Board of Education v. Duparquet , 50 N. J. Eq. 234, 24 Atl. 922..	75
Board of Education v. Guy , 64 Ohio St. 434, 60 N. E. 573.....	728
Board of Education v. Scoville , 13 Kan. 17.....	74, 99, 101
Board of Education v. Territory , 12 Okla. 286, 70 Pac. 792.....	612
Board of R. R. Commrs. v. Symms Grocer Co. , 53 Kan. 207, 35 Pac. 217.....	586
Board of Supervisors v. Buckley (Miss.) , 38 South. 104.....	628
Board of Supervisors v. Gans , 80 Miss. 76, 31 South. 539.....	804
Board of Supervisors v. Jenks , 65 Ill. 275.....	681
Board of Trade v. Christie Grain & Stock Co. (U. S.) , 25 Sup. Ct. 637.....	531
Bobo v. Grimke , 1 McMull. Eq. 304.....	1264
Bobo v. Vaiden , 20 S. C. 271.....	1476
Bock v. Stacey , 2 Russ. 121.....	959
Bockes v. Lansing , 74 N. Y. 437.....	1226, 1238
Bode v. New England Inv. Co. , 6 Dak. 499, 42 N. W. 658, 45 N. W. 197.....	647
Bodicoate v. Steers , 1 Dick. 60.....	1187
Bodwell v. Crawford , 26 Kan. 292, 40 Am. Rep. 306.....	844
Boehm v. Wood , 2 Jacob & W. 236.....	197
Bogaard v. Independent School Dist. , 93 Iowa, 269, 61 N. W. 859..	692
Bogan v. Mortgage Co. , 27 U. S. App. 346, 357, 11 C. C. A. 128, 135, 63 Fed. 192, 199.....	35, 37
Bogardus v. Moses , 181 Ill. 554, 54 N. E. 984.....	179
Bogert v. Bogert , 53 Hun, 629, 5 N. Y. Supp. 893.....	1206
Bogert v. Elizabeth , 27 N. J. Eq. 568.....	1242, 1248, 1249
Boggess v. Lowery , 78 Ga. 539, 6 Am. St. Rep. 279, 3 S. E. 771..	1136
Boggs v. Brown , 82 Tex. 41, 17 S. W. 830.....	350
Boglino v. Giorgetta (Colo. App.) , 78 Pac. 612.....	832
Bohart v. Chamberlain , 99 Mo. 622, 13 S. W. 85.....	17
Bohlman v. Green Bay & M. R. Co. , 40 Wis. 157.....	764

Bohm v. Metropolitan El. R. Co. , 129 N. Y. 576, 29 N. E. 802, 14 L. R. A. 344.....	781
Bohn Mfg. Co. v. Hollis , 54 Minn. 223, 40 Am. St. Rep. 319, 55 N. W. 1119, 21 L. R. A. 337.....	1015, 1018, 1049, 1050
Boid v. Dean , 48 N. J. Eq. 193, 21 Atl. 618.....	375
Boland v. St. John's Schools , 163 Mass. 229, 39 N. E. 1035..	855, 955
Boldt v. Early (Ind. App.), 70 N. E. 271.....	1339
Poles v. Caudle , 133 N. C. 528, 45 S. E. 835.....	1286
Boles v. Merrill , 173 Mass. 491, 73 Am. St. Rep. 308, 53 N. E. 894.....	1161
Bollo v. Navarro , 33 Cal. 459.....	1198
Polman v. Overall , 80 Ala. 451, 60 Am. Rep. 107, 2 South. 624..	1260
Bolton v. Antonio (Tex. Civ. App.), 21 S. W. 64.....	630
Bolton v. Bolton L. R. 7 Eq. 298, note.....	1200
Bolton v. Gilleran , 105 Cal. 244, 45 Am. St. Rep. 33, 38 Pac. 881..	1227
Bolton v. McShane , 67 Iowa, 207, 25 N. W. 135.....	763, 829
Bolton v. Prather (Tex. Civ. App.), 80 S. W. 666.....	1163
Bolton v. Ward , 4 Hare, 530.....	1181
Bolton v. Williams , 4 Bro. Ch. 297.....	70
Poltz v. Stoltz , 41 Ohio St. 540.....	1171
Bomar v. Means , 37 S. C. 520, 34 Am. St. Rep. 772, 16 S. E. 537	1443, 1445
Bomeisler v. Forster , 154 N. Y. 229, 48 N. E. 534, 39 L. R. A. 240.....	1076, 1090
Bonacum v. Harrington , 65 Neb. 831, 91 N. W. 886.....	563
Bonacum v. Murphy (Neb.), 98 N. W. 1030.....	559
Bonacum v. Murphy (Neb.), 104 N. W. 180.....	559
Bonaparte v. Baltimore etc. Ry. Co. , 75 Md. 340, 23 Atl. 784..	545
Bonaparte v. Camden & A. R. Co. , 1 Baldw. 218, Fed. Cas. No. 1617.....	764, 765, 838
Bond v. Greenwald , 7 Baxt. 466.....	1082
Bond v. Kenosha , 17 Wis. 286.....	749, 754
Bond v. Montgomery , 56 Ark. 563, 35 Am. St. Rep. 119, 20 S. W. 525.....	1500
Bond v. Pennsylvania Co. , 171 Ill. 508, 49 N. E. 545; reversing 69 Ill. App. 507.....	771
Bond v. State , 68 Miss. 648, 9 South. 353.....	351
Bonnard v. Perryman , [1891] 2 Ch. 269.....	1058
Bonner v. Mayfield , 82 Tex. 234, 18 S. W. 305.....	350
Bonney v. Seely , 2 Wend. 481.....	1478, 1479
Bonney v. Stoughton , 122 Ill. 536, 13 N. E. 833.....	1532
Booher v. Browning , 169 Pa. St. 18, 32 Atl. 85.....	844
Bookman v. Railroad Co. , 147 N. Y. 298, 49 Am. St. Rep. 664, 41 N. E. 705.....	779, 781
Pool v. Mix , 17 Wend. 119, 31 Am. Dec. 285.....	1186
Boon v. City of Utica , 5 Misc. Rep. 391, 26 N. Y. Supp. 932.....	620
Boone v. Clark , 129 Ill. 466, 21 N. E. 850, 5 L. R. A. 276.....	1398, 1400, 1402
Poone v. Graham , 215 Ill. 511, 74 N. E. 559.....	1146
Poone Co. Bank v. Byrum , 68 Ark. 71, 56 S. W. 532.....	1512
Booneville Nat. Bank v. Blakey , 107 Fed. 891, 47 C. C. A. 43....	256
Booraem v. North Hudson Co. R. Co. , 40 N. J. Eq. 557, 5 Atl. 106.....	484
Boorum v. Armstrong (Tenn. Ch. App.), 37 S. W. 1095....	1452, 1453
Boorum v. Tucker , 51 N. J. Eq. 135, 141, 26 Atl. 456.....	1303
Booth v. Brown , 62 Fed. 794.....	395

Booth v. Clark, 17 How. 322, 331, 15 L. ed. 164..	105, 287, 437, 440, 443
Booth v. Leicester, 3 Mylne & C. 459.....	1082
Booth v. Seibold, 37 Misc. Rep. 101, 74 N. Y. Supp. 776....	524, 525
Booth v. Stamper, 6 Ga. 172.....	1096
Booth v. Wiley, 102 Ill. 84, 114.....	1233
Porah v. Archers, 7 Dana (Ky.), 176.....	1202, 1212
Bordeaux v. Greene, 22 Mont. 254, 74 Am. St. Rep. 600, 56 Pac. 218.....	902
Forel v. Mead, 3 N. Mex. 84, 2 Pac. 222.....	1297
Forell v. Dann, 2 Hare, 440, 450.....	1313
Foreman v. Yeat, cited 1 Ch. Cas. 145.....	1176
Bornsta v. Johnson, 38 Minn. 230, 36 N. W. 341.....	469
Borrow v. Borrow, 34 Wash. 684, 76 Pac. 305.....	1352
Porton v. Brines-Chase Co., 175 Pa. St. 209, 34 Atl. 597.....	276, 284
Bosher v. Richmond etc. Land Co., 89 Va. 455, 37 Am. St. Rep. 879, 16 S. E. 360.....	1157
Bosley v. National Mach. Co., 123 N. Y. 550, 25 N. E. 990.....	1157
Posley v. Taylor, 5 Dana (Ky.), 157, 30 Am. Dec. 677.....	1476
Post Ex parte, 3 Jones Eq. 483.....	1217
Bostick v. Haynie (Tenn.), 36 S. W. 856.....	1161
Postock v. North Staffordshire Ry., 5 De Gex & S. 584.....	893
Poston & Lowell R. Corp. v. Salem & Lowell R. Co., 2 Gray, 1, 27	1001, 1002
Boston & M. C. C. & S. M. Co. v. Montana etc. Co., 24 Mont. 142, 60 Pac. 990.....	356, 360, 378
Boston & M. R. R. v. Sullivan, 177 Mass. 230, 83 Am. St. Rep. 275, 58 N. E. 689.....	832, 837
Boston Diatite Co. v. Florence Mfg. Co., 114 Mass. 69, 19 Am. Am. Rep. 310.....	798, 1057
Poston Ferrule Co. v. Hills, 159 Mass. 147, 34 N. E. 85, 20 L. R. A. 844.....	912, 923
Boston Franklinite Co. v. Condit, 19 N. J. Eq. 394.....	1188
Postwick v. Menek, 40 N. Y. 383.....	375, 377
Boswell v. Otis, 9 How. 336, 13 L. ed. 164.....	238
Bosworth v. Norman, 14 R. I. 521.....	932
Bosworth v. Terminal R. Assn., 174 U. S. 182, 19 Sup. Ct. 625, 43 L. ed. 941, modifying 80 Fed. 969, 26 C. C. A. 279, 53 U. S. App. 302.....	348, 408
Boteler v. Spelman, Finch, 96.....	1172
Botsford v. Wallace, 72 Conn. 195, 44 Atl. 10.....	852, 960
Botts v. Simpsonville & B. C. Turnpike Road Co., 88 Ky. 54, 10 S. W. 134, 2 L. R. A. 594.....	542
Boucicault v. Fox, 5 Blatchf. 87, Fed. Cas. No. 1691.....	987
Bouck v. Wilber, 4 Johns. Ch. 405.....	1271
Boughner v. Town of Clarksburg, 15 W. Va. 394.....	766
Boughton v. Phillips, 6 Paige, 433.....	1087
Boulder Val. Ditch Min. & M. Co. v. Farnham, 12 Mont. 1, 29 Pac. 277.....	1354
Bouldin v. Alexander, 15 Wall. 131, 21 L. ed. 69.....	562
Boulton v. Scott's Admr., 3 N. J. Eq. 231.....	1092
Boulton Carbon Co. v. Mills, 78 Iowa, 460, 43 N. W. 290, 5 L. R. A. 649.....	1471
Poulware v. Davis, 90 Ala. 207, 8 South. 84, 9 L. R. A. 601... 438, 440	
Bound v. South Carolina Ry. Co., 50 Fed. 312.....	416
Bound v. South Carolina Ry. Co., 7 C. C. A. 322, 58 Fed. 473....	420
Bourne v. Swan & Edgar, L'd., [1903] 1 Ch. 211, 223.....	990, 991

Boutwell v. Marr (1899), 71 Vt. 1, 76 Am. St. Rep. 746, 42 Atl. 607, 43 L. R. A. 803.....	1048
Bouverie v. Prentice, 1 Brown Ch. 200.....	1175
Bowden v. Achor, 95 Ga. 243, 22 S. E. 254.....	1162, 1165
Bowden v. Bland, 53 Ark. 53, 22 Am. St. Rep. 179, 13 S. W. 420.....	1147
Powen v. Hall, 6 Q. B. D. 333.....	1009, 1011
Bowen v. Mattheson, 14 Allen, 499.....	1048, 1050, 1051
Bowen v. Needles Nat. Bank, 76 Fed. 176.....	382
Bowen v. Wendt, 103 Cal. 236, 37 Pac. 149.....	929
Bowers v. Cator, 4 Ves. 91.....	1352
Powers v. Whittle, 63 N. H. 147, 56 Am. Rep. 499.....	524
Bowers Dredging Co. v. New York Dredging Co., 77 Fed. 980...	983
Bowes v. Law, L. R. 9 Eq. 636.....	512
Bowling v. Garrett, 49 Kan. 504, 33 Am. St. Rep. 377, 31 Pac. 135.....	1131
Bowling Green Trust Co. v. Virginia Pass. & Power Co., 133 Fed. 186.....	283
Bowman v. Floyd, 3 Allen, 76, 80 Am. Dec. 55.....	468
Bowman v. Frith (Ark.), 84 S. W. 709.....	629
Bowman v. Hazen (Kan.), 77 Pac. 589.....	344
Bowman v. Wolford, 80 Va. 213.....	1352
Bowra v. Wright, 4 De Gex & S. 265.....	1196
Boyce v. Continental Wire Co., 125 Fed. 741.....	167
Boyce v. Grundy, 3 Pet. 210, 215, 7 L. ed. 655.....	875, 1090, 1156
Boyce v. Hamilton, 21 Mo. App. 520, 525.....	83
Boyd v. Dowie, 65 Barb. 237.....	1174, 1175
Boyd v. Logansport, R. & N. T. Co., 161 Ind. 587, 69 N. E. 398..	768
Boyd v. Mutual Fire Assn., 116 Wis. 155, 96 Am. St. Rep. 948, 90 N. W. 1086, 61 L. R. A. 918, 94 N. W. 171.....	56, 1472
Boyd v. Royal Ins. Co., 111 N. C. 372, 16 S. E. 389.....	355, 364
Boyd v. Schlesinger, 59 N. Y. 391.....	1227
Boyd v. Selma, 96 Ala. 144, 11 South. 393, 16 L. R. A. 729.....	665
Boyd v. Wiggins, 7 Okla. 85, 54 Pac. 411.....	731
Boyd v. Woolwine, 40 W. Va. 282, 21 S. E. 1020.....	946
Boyden v. Bragaw, 53 N. J. Eq. (8 Dick.) 26, 30 Atl. 330.....	858
Boyer v. Bolender, 129 Pa. St. 324, 15 Am. St. Rep. 723, 18 Atl. 127.....	1484
Boyer v. Marshall, 44 Hun, 623.....	1488
Boyer v. Western Union Tel. Co., 124 Fed. 246.....	1034
Boyle v. Manion, 74 Miss. 572, 21 South. 530.....	78
Boynton v. Haggart, 120 Fed. 819.....	37
Boynton Saw and File Co., Matter of, 34 Hun, 369.....	245
Boyson v. Thorn (1893), 98 Cal. 578, 33 Pac. 492, 21 L. R. A. 233.....	1010
Bozon v. Farlow, 1 Mer. 459.....	1274
Brabrook Tailoring Co. v. Belding Bros., 40 Ill. App. 326.....	239
Brace v. Evans, 5 Pa. Co. Ct. Rep. 163.....	1030
Brace v. Evans, 3 Ry. & Corp. Law Jour. 561.....	1037
Brackett v. Gilmore, 15 Minn. (Gil. 190) 245.....	1251
Bradfield v. Dewell, 48 Mich. 9, 11 N. W. 760.....	914
Bradford v. Cooledge, 103 Ga. 753, 30 S. E. 579.....	1454
Bradford v. Downs, 48 N. Y. Supp. 1051, 24 App. Div. 97.....	1131
Bradford v. Marvin, 2 Fla. 463.....	1504
Bradford v. Parkhurst, 96 Cal. 102, 31 Am. St. Rep. 189, 30 Pac. 1106.....	1293
Bradford v. San Francisco, 112 Cal. 537, 44 Pac. 912.....	609, 625
Bradish v. Lucken, 38 Minn. 186, 36 N. W. 454.....	707, 708
Bradley v. Fuller, 23 Pick. 1.....	1195

Bradley v. Harkness, 26 Cal. 77.....	1190
Bradley v. Larkin, 5 Kan. App. 11, 47 Pac. 315.....	1411
Bradley v. Norton, 33 Conn. 157, 87 Am. Dec. 200.....	990
Bradley v. Owsley, 74 Tex. 69, 11 S. W. 1052.....	1353
Bradley v. Owsley (Tex.), 19 S. W. 340.....	1355
Bradley v. Richardson, 23 Vt. 720, Fed. Cas. No. 1786.....	1120
Bradley v. Zehner, 82 Va. 685.....	1201
Bradshaw v. Callaghan, 5 Johns. 80.....	1206
Bradshaw v. Callaghan, 8 Johns. 563.....	1192
Brady v. Carteret Realty Co. (N. J.), 60 Atl. 938.....	1130
Brady v. Johnson, 75 Md. 445, 26 Atl. 49, 20 L. R. A. 737.....	1136
Brady v. Sweetland, 13 Kan. 41.....	592
Brady v. Waldron, 2 Johns. Ch. 148.....	816
Brady v. Weeks, 3 Barb. 157.....	862
Brady v. Yost, 6 Idaho, 273, 55 Pac. 542.....	1264
Bragg v. Gaynor, 85 Wis. 468, 55 N. W. 919, 21 L. R. A. 161.....	1452
Bragg Mfg. Co. v. City of Hartford, 56 Fed. 292.....	979, 981
Brake v. Payne, 137 Ind. 479, 37 N. E. 140.....	40, 1095
Braker v. Devereaux, 8 Paige, 513.....	1202
Braman v. Farmers' Loan etc. Co., 114 Fed. 18, 51 C. C. A. 644.....	388
Bramhall v. Ferris, 14 N. Y. 41, 67 Am. Dec. 113.....	1421
Bramwell v. Guheen, 3 Idaho, 347, 29 Pac. 110.....	676
Branch v. Mitchell, 24 Ark. 439.....	1232
Branch Turnpike Co. v. Yuba, 13 Cal. 190.....	892
Brand v. Power, 110 Ga. 522, 36 S. E. 53.....	1160
Brande v. Grace, 154 Mass. 210, 31 N. E. 633.....	
.....	516, 855, 950, 951, 956, 963
Brandirf v. Harrison Co., 50 Iowa, 164.....	691
Brandis v. Grissom, 26 Ind. App. 661, 60 N. E. 709.....	940
Brandon v. Green, 7 Humph. 130.....	1077
Brandreth v. Lance, 8 Paige Ch. 24, 34 Am. Dec. 368.....	798, 1056
Brandt v. Allen, 76 Iowa, 50, 40 N. W. 82, 1 L. R. A. 653.....	299, 300
Brandt v. Thompson, 91 Cal. 458, 27 Pac. 763.....	1253
Branner v. Webb, 40 Kan. App. 217, 63 Pac. 274.....	152, 435
Brashear v. Macey, 3 J. J. Marsh. 89.....	815, 1202
Brasher v. Miller, 114 Ala. 485, 21 South. 467.....	631
Brashier v. Gratz, 6 Wheat. 528, 537, 538, 5 L. ed. 322.....	1330
Brasie v. Minneapolis Brewing Co., 87 Minn. 456, 94 Am. St. Rep. 709, 92 N. W. 340.....	1438
Brass v. Rathbone, 8 App. Div. 78, 40 N. Y. Supp. 466.....	721
Brassey v. Railroad Co., 19 Fed. 663.....	208, 253
Brasted v. Sutton, 30 N. J. Eq. 462.....	172
Brauer v. Baltimore etc. Co., 99 Md. 367, 58 Atl. 21.....	931
Brought v. Griffith, 16 Iowa, 26.....	1510
Braun, Appeal of, 105 Pa. St. 414, 3 Am. & Eng. Corp. Cas. 1.....	1469
Brauns v. Glesige, 130 Ind. 167, 29 N. E. 1061.....	516
Bravard v. Cincinnati, H. & I. R. Co., 115 Ind. 1, 17 N. E. 183.....	787
Brawn v. McBean, 54 App. Div. 635, 66 N. Y. Supp. 785.....	350
Breathwit v. Rogers, 32 Ark. 758.....	1153
Breaux v. Le Blanc, 69 Am. St. Rep. 420, note.....	1526
Breeden v. Grigg, 8 Baxt. 163.....	1086
Breit v. Yeaton, 101 Ill. 242.....	1147
Brenan v. Preston, 2 De Gex, M. & G. 813.....	153
Brendred v. Machine Co., 4 N. J. Eq. 294, 305.....	243
Brenner v. Alexander, 16 Or. 349, 8 Am. Rep. 301, 19 Pac. 9.....	1077
Brenton v. Peck (Tex. Civ. App.), 87 S. W. 898.....	247
Bresler v. Pitts, 58 Mich. 347, 25 N. W. 311.....	1173

Brett v. East India & L. S. Co., 2 Hem. & M. 404.....	499
Brett v. Warnick, 44 Or. 511, 102 Am. St. Rep. 639, 75 Pac. 1061.....	1270
Brevoort v. Brevoort, 70 N. Y. 136.....	1207
Brewer v. Broadworth, 22 Ch. D. 105.....	1330
Brewer v. Franklin Mills, 42 N. H. 292.....	1510
Brewer v. Herbert, 30 Md. 301, 96 Am. Dec. 582.....	1389
Brewer v. Marshall, 19 N. J. Eq. 537.....	507
Brewer v. Nash, 16 R. I. 458, 27 Am. St. Rep. 749, 17 Atl. 857.....	1501, 1510
Brewer v. Springfield, 97 Mass. 152.....	703
Brewster v. Miller's Sons Co. (1897), 101 Ky. 338, 41 S. W. 301, 38 L. R. A. 505.....	1049
Briant v. Reed, 14 N. J. Eq. 271.....	69, 73, 92, 94, 95
Briarfield Iron Works v. Foster, 54 Ala. 622.....	113
Brick v. Hornbeck, 19 Misc. Rep. (N. Y.) 218, 43 N. Y. Supp. 301.....	173
Bridesburg Mfg. Co., Appeal of, 106 Pa. St. 275.....	80, 82
Bridgeford v. Barbour, 80 Ky. 529.....	1213
Bridgeport Development Co. v. Tritsch, 110 Ala. 274, 20 South. 16.....	214, 226
Bridges v. Morris, 90 N. C. 32.....	569
Bridges v. Cooper, 98 Tenn. 394, 39 S. W. 723.....	1410, 1420
Bridges v. Sargent, 1 Kan. App. 442, 40 Pac. 823.....	821
Bridgman v. McKissick, 15 Iowa, 260.....	1449
Brien v. Harriman, 1 Tenn. Ch. 467.....	280
Brierly v. Equitable Aid Union, 170 Mass. 218, 64 Am. St. Rep. 297, 48 N. E. 1090.....	71
Brigg v. Thornton [1904] 1 Ch. 386.....	515
Briggs v. Buckingham, 6 Del. Ch. 267, 23 Atl. 858.....	575
Briggs v. Johnson, 71 Me. 235.....	1226, 1235
Briggs v. Peacock, 52 L. J. Ch. D. 1.....	1191
Briggs v. Planters' Bank, Freem. (Miss.) 574.....	1400
Bright v. Allen, 203 Pa. St. 386, 53 Atl. 248.....	946
Bright v. Allen, 203 Pa. St. 394, 93 Am. St. Rep. 769, 53 Atl. 251.....	860, 955
Bright v. Lennon, 83 N. C. 183.....	1482
Brigot v. Brigot, 49 La. Ann. 1428, 22 South. 641.....	1075
Brill v. Peckham Mfg. Co., 129 Fed. 139.....	983
Brinkerhoff v. Brumfield, 94 Fed. 422.....	661
Brinkerhoff v. Bostwick, 88 N. Y. 52.....	384
Brinkerhoff v. Brown, 4 Johns. Ch. 671.....	1435
Brinkman v. Ritzinger, 82 Ind. 358.....	177
Brinton v. Van Cott, 8 Utah, 480, 33 Pac. 218.....	1358
Briscoe v. Allison, 43 Ill. 291.....	680
Briscoe v. Power, 85 Ill. 420.....	1485
Bristol v. Bristol & W. Waterworks, 19 R. I. 413, 34 Atl. 359, 32 L. R. A. 740.....	1275
Bristol Door & Lumber Co. v. Bristol, 97 Va. 304, 75 Am. St. Rep. 783, 33 S. E. 588.....	633
Bristow v. Home Bldg. Co., 91 Va. 18, 20 S. E. 946, 168, 180, 263, 265	
British Linen Co. v. South American & Mexican Co., [1894] 1 Ch. 108.....	231
Britt v. Reed, 42 Or. 76, 70 Pac. 1029.....	970
Broadbent v. Imperial Gas Co., 7 De Gex, M. & G. 436, 462, affirmed in 7 H. L. Cas. 600.....	909
Brock v. Bateman, 25 Ohio St. 609.....	1537

Brock v. Dole , 66 Wis. 142, 28 N. W. 334.....	803
Brock v. Eastman , 28 Vt. 658, 67 Am. Dec. 733.....	1194
Brock v. Hidy , 13 Ohio St. 306.....	1332
Brock v. Southern Ry. Co. , 44 S. C. 444, 22 S. E. 601.....	101
Brocken v. Preston , 1 Pinn. (Wis.) 584, 44 Am. Dec. 412.....	849
Brockert v. Central Iowa R. Co. , 82 Iowa, 369, 47 N. W. 1026..	412
Brockman v. City of Creston 79 Iowa, 587, 44 N. W. 822.....	610, 611, 613, 615
Broder v. Saillard , L. R. 2 Ch. D. 692.....	893, 923, 924, 925
Broderick v. Allamakee County , 104 Iowa, 750, 73 N. W. 884...	692
Broderick v. Cary , 98 Wis. 419, 74 N. W. 95.....	1240, 1249
Broderick's Will , 21 Wall. 503, 22 L. ed. 599.....	62
Brodie v. Barry , 3 Mer. 695.....	160
Broiestedt v. Holland , 7 Ves. 3, 21, 22.....	1239
Broiestedt v. South Side Co. , 55 N. Y. 220.....	848
Bromley v. Holland , 5 Ves. 610, 618.....	1152
Bronson v. Albion Tel. Co. (Neb.) , 93 N. W. 201.....	774
Brook v. Hertford , 2 P. Wms. 518.....	1187, 1196, 1203
Brook v. Hewitt , 3 Ves. 253.....	1387
Brooke v. Garrod , 1 De Gex & J. 62.....	1328
Brooke v. Roundthwaite , 5 Hare, 298.....	1365
Brooke v. Smith , 13 Pa. Co. Ct. R. 557, 2 Pa. Dist. R. 767, 33 Wkly. Not. Cas. 74.....	75
Brookfield v. Williams , 2 N. J. Eq. 341.....	1212
Brooking v. Maudslay , L. R. 38 Ch. D. 636.....	1154
Brooklyn Club v. McGuire , 116 Fed. 782, 783.....	1299
Brooklyn El. R. Co. v. Brooklyn, B. & W. E. R. Co. , 23 App. Div. 29, 48 N. Y. Supp. 665.....	533, 1382
Brooks v. Calderwood , 34 Cal. 563.....	1253
Brooks v. Greathed , 1 Jacob & W. 176.....	302
Brooks v. Kearns , 86 Ill. 547.....	1226
Brooks v. Lowenstein , 124 Ala. 158, 27 South. 520.....	1445
Brooks v. Twitchell , 182 Mass. 443, 94 Am. St. Rep. 662, 65 N. E. 843.....	1096
Brooks v. Whitson , 7 Smedes & M. 513.....	1095
Broom v. Broom , 3 Mylne & K. 443.....	1534
Broome v. Monck , 10 Ves. 597.....	1377
Broome v. New York etc. Co. , 42 N. J. Eq. 141, 7 Atl. 851.....	914
Broomfield v. Roy , 120 Fed. 502, 56 C. C. A. 652.....	429
Broughton v. Howe , 6 Vt. 267.....	1203
Broughton v. Wimberly , 65 Ala. 549.....	1482
Broussard v. Le Blanc , 44 La. Ann. 880, 11 South. 460.....	1132
Brouwer v. Jones , 23 Barb. 153.....	506
Browell v. Reed , 1 Hare, 434.....	159, 160
Brower v. Kantner , 190 Pa. St. 182, 43 Atl. 7.....	596
Brower v. Williams , 44 App. Div. 337, 60 N. Y. Supp. 716..	840, 959
Brown v. Arnold (C. C. A.) , 131 Fed. 723.....	37
Brown v. Atlanta R. & P. Co. , 113 Ga. 462, 39 S. E. 71.....	774
Brown v. Barker , 74 N. Y. Supp. 43, 68 App. Div. 592.....	1432
Brown v. Brown , 99 Ga. 312, 25 S. E. 649.....	1119
Brown v. Brown , 142 Ill. 409, 32 N. E. 500.....	34
Brown v. Brown , 8 N. H. 94.....	1186, 1194
Brown v. Brown , 33 N. J. Eq. 657.....	1359
Brown v. Brown , 71 Tex. 355, 9 S. W. 261.....	350
Brown v. Campbell , 100 Cal. 635, 38 Am. St. Rep. 314, 35 Pac. 433.....	1437
Brown v. Catlettsburg , 11 Bush (Ky.), 435.....	632

Brown v. Chapman, 90 Va. 174, 17 S. E. 855.....	1124
Brown v. Coddington, 72 Hun, 147, 25 N. Y. Supp. 649.....	1193
Brown v. Cohn, 88 Wis. 627, 60 N. W. 826.....	1236
Brown v. Concord, 56 N. H. 375.....	719
Brown v. Cranberry Iron etc. Co., 72 Fed. 96, 18 C. C. A. 444.....	1200
Brown v. Daniels (Tenn.), 51 S. W. 991.....	1083
Brown v. Desmond, 100 Mass. 267.....	29
Brown v. Fidelity & I. Co. (Tex.), 80 S. W. 593.....	
.....	1494, 1495, 1511
Brown v. French, 80 Fed. 166.....	654 660
Brown v. Guarantee Trust Co., 128 U. S. 403, 9 Sup. Ct. 127, 32 L. ed. 468.....	1337
Brown v. Ikard (Tex. Civ. App.), 77 S. W. 967.....	1133
Brown v. Farwell Co., 74 Fed. 764.....	1435
Brown v. Jacobs Pharmacy Co. (1902), 115 Ga. 429, 90 Am. St. Rep. 126, 41 S. E. 553, 57 L. R. A. 547.....	1030, 1048
Brown v. J. Wayland Kimball Co., 84 Me. 492, 24 Atl. 1007....	1409
Brown v. Kling, 101 Cal. 295, 35 Pac. 995.....	523, 525
Brown v. Lake Superior Iron Co., 134 U. S. 530, 10 Sup. Ct. 604, 33 L. ed. 1021.....	116, 227
Brown v. Lutheran Church, 23 Pa. St. 500	1192
Brown v. Manning, 6 Ohio, 298, 27 Am. Dec. 255.....	941
Brown v. Nichols, 42 N. Y. 26.....	1449
Brown v. Niles, 165 Mass. 276, 43 N. E. 90.....	514
Brown v. Norman, 65 Miss. 369, 7 Am. St. Rep. 663, 4 South. 293	1162, 1163, 1164
Brown v. O'Brien, 168 Mass. 484, 47 N. E. 195.....	941
Brown v. Ontario etc. Co., 81 App. Div. 273, 80 N. Y. Supp. 837	906
Brown v. Pollard, 89 Va. 696, 17 S. E. 6....	1347
Brown v. Rauch, 1 Wash. 497, 20 Pac. 785.....	334
Brown v. Reding, 50 N. H. 336.....	610
Brown v. Rouse, 125 Cal. 645, 58 Pac. 267.....	1501
Brown v. Seattle, 5 Wash. 35, 31 Pac. 313, 32 Pac. 214, 18 L. R. A. 161.....	764, 785
Brown v. Simons, 44 N. H. 475.....	1486
Brown v. Solary, 37 Fla. 102, 19 South. 161.....	826, 827, 846, 849
Brown v. Swarthout, 134 Mich. 585, 96 N. W. 951.....	1290
Browning v. Stacey, 52 App. Div. 626, 65 N. Y. Supp. 203....	183
Brown v. Stewart, 1 Md. Ch. Dec. 87.....	816
Brown v. Turner, 1 Aik. 350, 15 Am. Dec. 696.....	1189
Brown v. Union Ins. Co., 3 La. Ann. 177.....	225
Brown v. Walker, 84 Fed. 532.....	1117
Brown v. Warner, 78 Tex. 543, 22 Am. St. Rep. 67, 14 S. W. 1032, 11 L. R. A. 394.....	391
Brown v. Wilson 21 Colo. 309, 52 Am. St. Rep. 228, 40 Pac. 688.....	1233, 1247
Brownell v. Brownell, 19 Wend. 367.....	1194
Brownfield v. Canon, 25 Pa. St. 299.....	64
Brownfield v. Houser, 30 Or. 534, 49 Pac. 843.....	610
Browning v. Lavender, 104 N. C. 73, 10 S. E. 77.....	1236
Brownson v. Reynolds, 77 Tex. 254, 13 S. W. 986.....	1077
Brownson v. Roy, 133 Mich. 617, 95 N. W. 710.....	288, 292
Bruce v. Laing (Tex. Civ. App.), 64 S. W. 1019.....	1399
Bruce v. Tilson, 25 N. Y. 194.....	1295, 1333
Bruggeman v. Bank, 1 City Ct. R. (N. Y.) 86.....	92

Brumback v. Brumback , 198 Ill. 66, 64 N. E. 740.....	59
Brumbaugh v. Jones (Neb.), 98 N. W. 54.....	1424
Brumbaugh v. Richcreek , 127 Ind. 240, 22 Am. St. Rep. 649, 26 N. E. 664.....	1410
Brumley v. Boyd , 28 Tex. Civ. App. 164, 66 S. W. 874.....	591
Brundage v. Cheneworth , 101 Iowa, 256, 63 Am. St. Rep. 382, 70 N. W. 211.....	1437
Brundage v. Deardorf , 92 Fed. 214, 34 C. C. A. 304.....	563
Brundage v. Home Savings etc. Assn. , 11 Wash. 277, 39 Pac. 666.....	113, 185
Brundage v. Monumental G. & S. M. Co. , 12 Or. 322, 7 Pac. 314.....	1468
Bruner v. Brown , 139 Ind. 600, 38 N. E. 318.....	1465, 1466
Bruschke v. Wright , 166 Ill. 183, 57 Am. St. Rep. 125, 46 N. E. 813.....	1501, 1510
Brush v. Carbondale , 78 Ill. 76.....	606
Brush v. Manhattan El. R. Co. , 26 Abb. N. C. 73, 13 N. Y. Supp. 908.....	782, 788
Brush v. Manhattan El. R. Co. (Com. P.) , 17 N. Y. Supp. 540..	779
Brush Electric Co. v. Accumulator Co. , 50 Fed. 833.....	982
Brush Electric Co. v. Electric Imp. Co. , 45 Fed. 241.....	981
Bryan v. Bryan , 61 N. J. Eq. 45, 48 Atl. 341.....	1208
Bryan v. Cormick , 1 Cox, 422.....	182
Bryan v. Hobbs (Ark.), 83 S. W. 340.....	40
Bryan v. Kennett , 113 U. S. 179, 5 Sup. Ct. 407, 28 L. ed. 908..	27
Bryan v. Moring , 94 N. C. 694.....	154, 156
Bryan v. Salterstall , 3 J. J. Marsh. 672.....	92
Bryan v. Tormey , 84 Cal. 126, 24 Pac. 319.....	1248
Bryant v. Booze , 55 Ga. 438.....	1384
Bryant v. Bryant , 14 Ky. Law Rep. 358, 20 S. W. 270.....	1418
Bryant v. Stearns , 16 Ala. 306.....	1204
Bryant v. Bull , L. R. 10 Ch. Div. 153.....	119
Bryant v. Groves , 42 W. Va. 10, 24 S. E. 605.....	48
Bryant v. Logan (W. Va.), 49 S. E. 21.....	631
Bryden v. Northrup , 58 Ill. App. 233.....	513
Bryson v. McShane , 48 W. Va. 126, 35 S. E. 848, 49 L. R. A. 527..	1358
Bubb's Case , Freem. Ch. 38.....	1375
Bubenzer v. Philadelphia etc. Co. (Del.) , 57 Atl. 242.....	940
Buchan v. Sumner , 2 Barb. Ch. 204.....	1189
Buchanan v. Berkshire etc. Ins. Co. , 96 Ind. 510, 527 et seq. 176, 183	
Buchanan v. Buchanan , 38 S. C. 410, 17 S. E. 218.....	1208
Buchanan v. Comstock , 57 Barb. 568.....	150
Buchholz v. New York etc. Co. , 148 N. Y. 640, 43 N. E. 76, reversing 66 Hun, 377, 21 N. Y. Supp. 503.....	914
Buck v. Buck , 11 Paige, 170.....	1379
Buck v. Colbath , 3 Wall. 334, 18 L. ed. 257.....	324
Buck v. Fitzgerald , 21 Mont. 482, 54 Pac. 942.....	596
Buck v. Martin , 21 S. C. 590, 53 Am. Rep. 702.....	1212
Buck v. Miller , 147 Ind. 586, 62 Am. St. Rep. 436, 45 N. E. 647, 47 N. E. 8, 37 L. R. A. 384.....	688, 689
Buck v. Piedmont etc. Ins. Co. , 4 Fed. 849, 4 Hughes, 415.....	281
Buck v. Spofford , 40 Me. 328.....	1487
Buck etc. Co. v. Lehigh etc. Co. , 50 Pa. St. 91, 88 Am. Dec. 534.....	932
Buckers etc. Co. v. Farmers' etc. Co. , 31 Colo. 62, 72 Pac. 49..	970
Buckhannon & N. R. Co. v. Davis (C. C. A.), 135 Fed. 707....	338
Buckland v. Papillon , L. R. 2 Ch. App. 67.....	1258

Buckley v. Anderson, 137 Ala. 325, 34 South. 238.....	221, 234
Buckley v. Baldwin, 69 Miss. 804, 13 South. 851.....	262, 273
Buckmaster v. Harrop, 7 Ves. 341.....	1349
Bucknall v. Story, 36 Cal. 67.....	669, 1236
Buckner v. Pacific etc. R. Co., 53 Ark. 16, 13 S. W. 332.....	1163
Buckner v. Stewart, 34 Ala. 529.....	1488
Budd v. Camden Horse R. Co., 61 N. J. Eq. 543, 48 Atl. 1028..	770
Budd v. Long, 13 Fla. 288..	1228
Budd v. Tax Collector, 36 La. Ann. 959.....	701
Buddecke v. Ziegenhein, 122 Mo. 239, 26 S. W. 696.....	712
Buel v. Selz, 5 Ill. App. 116.....	1518, 1521
Buena Vista Fruit etc. Co. v. Tuohy, 107 Cal. 243, 40 Pac. 386..	1165
Buffalo v. Harling, 50 Minn. 551, 52 N. W. 931.....	930
Buffalo etc. R. R. v. Lampson, 47 Barb. 533.....	1226
Bufford v. Bufford, 1 Bibb. 305-308.....	1415
Buffum v. Hale, 71 Minn. 190, 73 N. W. 856.....	346
Bufkin v. Boyce, 104 Ind. 53, 3 N. E. 615.....	146
Buford v. Holley, 28 Fed. 680.....	1426
Builders' & Painters' Supply Co. v. First Nat. Bank, 123 Ala. 203, 26 South. 311.....	1425
Buller v. Bishop of Exeter, 1 Ves. Sr. 340.....	1187
Bullitt v. Eastern Kentucky Land Co., 99 Ky. 324, 36 S. W. 16	1354
Bullock v. Adams, 20 N. J. Eq. 367.....	1334
Bullock v. Bullock, 52 N. J. Eq. 561, 46 Am. St. Rep. 528, 27 L. R. A. 213, 30 Atl. 676.....	25
Bullock v. Boyd, 2 Edw. Ch. 293.....	1516
Bullock v. Campbell, 9 Gill (Md.), 182.....	1478, 1480
Bulwer Con. Min. Co. v. Standard Con. Min. Co., 83 Cal. 589, 23 Pac. 1102.....	1249, 1251
Bumgardner v. Harris, 92 Va. 188, 23 S. E. 229	1440
Bumgardner v. Leavitt, 35 W. Va. 194, 13 S. E. 67, 12 L. R. A. 776.....	1262, 1269
Bumpass v. Reams, 1 Sneed. 595.....	1089
Bunce v. Gallagher, 5 Blatchf. 487, Fed. Cas. No. 2133....	1225, 1234
Bundy v. Summerland, 142 Ind. 92, 41 N. E. 322.....	689
Bunker v. Locke, 15 Wis. 635.....	816
Bunn v. Daly, 24 Hun. 526.....	195
Bunting v. Ricks, 22 N. C. 130, 32 Am. Dec. 699.....	1512
Bunton v. Lyford, 37 N. H. 512, 75 Am. Dec. 144.....	1117
Burch v. West, 134 Ill. 258, 25 N. E. 658.....	1120
Burckhalter v. Jones, 32 Kan. 5, 3 Pac. 559.....	1302
Burckhardt v. City of Atlanta, 103 Ga. 302, 30 S. E. 32.....	607
Burden v. Burden, 159 N. Y. 287, 54 N. E. 17.....	546
Burden v. Stein, 27 Ala. 104, 62 Am. Dec. 758.....	922, 963
Burdine v. Burdine, 98 Va. 515, 81 Am. St. Rep. 741, 36 S. E. 992.....	1292, 1293, 1295
Burdon v. Barkus, 4 De Gex, F. & J. 42.....	1534
Burgdorf v. District of Columbia, 7 App. D. C. 405.....	652
Burger v. Potter, 32 Ill. 66.....	1393
Burges v. Lamb, 16 Ves. 174, 185.....	813
Burgess v. Davis, 138 Ill. 578, 28 N. E. 817.....	593
Burget v. Incorporated Town of Greenfield, 102 Iowa, 432, 94 N. W. 933.....	637
Burgett v. Teal, 91 Ind. 260.....	1165
Burhans v. Burhans, 2 Barb. Ch. 398.....	1182, 1194, 1202
Burk v. Muskegon Mach. & F. Co., 98 Mich. 614, 57 N. W. 804..	330

Burke v. Backus, 51 Minn. 174, 53 N. W. 458.....	48
Burke v. Cassin, 45 Cal. 467, 13 Am. Rep. 204.....	990
Burke v. Ellis, 105 Tenn. 702, 58 S. W. 855.....	342
Burke v. Mead, 159 Ind. 252, 64 N. E. 880.....	1290
Burke v. Morris, 121 Ala. 126, 25 South. 759.....	1443
Burke v. Smith, 69 Mich. 380, 37 N. W. 838.....	901, 902
Burke v. Smyth, 3 Jones & L. 193.....	1258
Burke v. Snively, 208 Ill. 328, 70 N. E. 327.....	581
Burke v. Wall, 29 La. Ann. 38, 29 Am. Rep. 316.....	940
Burke v. Wheat, 22 Kan. 722.....	1075
Burleigh v. Chehalis County, 75 Fed. 873, 34 L. R. A. 393.....	321
Burlington v. Schwarzman, 52 Conn. 181, 52 Am. Rep. 571....	
.....	912, 923, 929
Burlington & M. R. R. v. Commissioners of York County, 7	
Neb. 487	717
Burnall v. Bushwick R. R., 75 N. Y. 211.....	1396
Burne v. Partridge, 61 N. J. Eq. 434, 48 Atl. 770.....	1439
Burnell v. Bradbury, 67 Kan. 762, 74 Pac. 279.....	1295
Burnes v. City of Atehison, 48 Kan. 507, 29 Pac. 579.....	117
Burnet v. Anderson, 1 Mer. 405.....	83
Burnet v. Cincinnati, 3 Ohio, 73, 17 Am. Dec. 582.....	727, 1228
Burnett v. Millsaps, 59 Miss. 333.....	1477, 1489
Burnett v. Milnes, 148 Ind. 230, 46 N. E. 464.....	1097
Burney v. Ryle, 91 Ga. 701, 17 S. E. 986.....	521
Burnham v. Bowen, 111 U. S. 776, 4 Sup. Ct. 675, 28 L. ed. 596..	
.....	414, 416, 419
Burnham v. Dillon, 100 Mich. 352, 59 N. W. 176.....	1430
Burnham v. Kempton, 44 N. H. 78, 92.....	878, 879, 881, 883
Burnham v. Rogers, 167 Mo. 17, 66 S. W. 970.....	710
Burnham v. Smith, 82 Mo. App. 35.....	1429
Burnley v. Stevenson, 24 Ohio St. 474, 15 Am. Rep. 621.....	30
Burns v. Daggett, 141 Mass. 368, 6 N. E. 727.....	1353
Burns v. Lynde, 6 Allen, 305.....	1226
Burns v. Mearns, 44 W. Va. 744, 30 S. E. 112.....	1173
Burr v. Hunt, 18 Cal. 303.....	669
Burris v. Gooch, 5 Rich. (S. C.) 1.....	1210
Burritt v. Press Pub. Co., 19 App. Div. 609, 46 N. Y. Supp. 295..	
.....	68, 101
Burritt v. Press Pub. Co., 25 App. Div. 141, 49 N. Y. Supp. 201..	101
Burroughs v. Satterlee, 67 Iowa, 396, 56 Am. Rep. 350, 25 N. W.	
808.....	971
Burrus v. City of Columbus, 105 Ga. 42, 31 S. E. 124.....	878
Burt v. Cassety, 12 Ala. 734.....	1227
Burton v. Black, 32 Ga. 53.....	65, 70, 80
Burton v. Gleason, 56 Ill. 25.....	1226, 1232
Burton v. Linn, 47 N. Y. Supp. 835, 21 App. Div. 609.....	1259
Burton v. Marshall, 4 Gil. (Md.) 487, 45 Am. Dec. 171.....	497, 520
Burton v. Wiley, 26 Vt. 430.....	1078
Burton Stock-car Co. v. Traeger, 187 Ill. 9, 58 N. E. 418....	683, 684
Burwell v. Vance County Commrs., 93 N. C. 73, 53 Am. Rep. 454..	889
Busbee v. Lewis, 85 N. C. 332.....	1226, 1233
Busbee v. Macy, 85 N. C. 329.....	1226, 1236
Busey v. Hooper, 35 Md. 15, 6 Am. Rep. 350.....	543
Busey v. Moraga, 130 Cal. 586, 130 Pac. 1081.....	1143
Bush v. Herring, 113 Iowa, 158, 84 N. W. 1036.....	1133
Bush v. O'Brien, 164 N. Y. 205, 58 N. E. 106.....	619

Bushong v. Rector, 32 W. Va. 311, 25 Am. St. Rep. 817, 9 S. E. 225.....	1133
Business Men's League v. Waddill, 143 Mo. 495, 45 S. W. 262, 40 L. R. A. 501.....	577
Buskirk v. King, 25 U. S. App. 607, 72 Fed. 22, 18 C. C. A. 418.	843
Bussier v. Weekey, 11 Pa. Super. Ct. 463.....	849, 859
Buster v. Wright (Ind. Ter.), 69 S. W. 882.....	575
Buswell v. Supreme Sitting etc. of Iron Hall, 161 Mass. 224, 36 N. E. 1065, 23 L. R. A. 846.....	359, 448, 454
Butchart v. Dresser, 4 De Gex, M. & G. 542.....	145
Butcher v. Stapely, 1 Vern. 363.....	1348
Butchers & Drovers' Stockyards Co. v. Louisville & N. R. Co., 67 Fed. 35, 14 C. C. A. 290, 31 U. S. App. 252.....	1062
Bute v. Glamorganshire Candle Co., 1 Phill. Ch. 681.....	1175
Butler v. Atlantic Trust Co., 28 Misc. Rep. 42, 59 N. Y. Supp. 814	69
Butler v. Burleson, 16 Vt. 176	524
Butler v. Butler's Admr., 8 W. Va. 674.....	1475, 1477, 1479
Butler v. Frazer (Sup. Ct.), 57 N. Y. Supp. 900.....	173
Butler v. Freeman, Amb. 301, 303.....	138
Butler v. Prentiss, 158 N. Y. 49, 52 N. E. 652 (reversing 36 N. Y. Supp. 301, 91 Hun, 643).....	53
Butler v. Rutledge, 2 Cold. 4.....	1226
Butler v. Thompson, 45 W. Va. 660, 72 Am. St. Rep. 838, 31 S. E. 960.....	1352
Butler v. White, 83 Fed. 578.....	595
Butler v. White Plains, 59 App. Div. 30, 69 N. Y. Supp. 193..	925, 967
Butman v. James, 34 Minn. 547, 27 N. W. 66.....	846
Butte Canal Co. v. Vaughan, 11 Cal. 143, 70 Am. Dec. 769.....	969
Butterfield v. Nogales Copper Co. (Ariz.), 80 Pac. 345.....	28, 31
Button v. Schroyer, 5 Wis. 598.....	1382, 1393
Buxton v. Monkhouse, Coop. 41.....	203
Buxton v. Broadway, 45 Conn. 540.....	1155
Buxton v. Lister, 3 Atk. 383.....	1256, 1257, 1266
Buzard v. Houston, 119 U. S. 347, 7 Sup. Ct. 249, 30 L. ed. 451..	1156
Byars v. Stubbs, 85 Ala. 256, 4 South. 755.....	1307
Bybee v. Summers, 4 Or. 354.....	1203
Byers v. Danley, 27 Ark. 96.....	1194
Byers v. McAuley, 149 U. S. 608, 13 Sup. Ct. 906, 37 L. ed. 367..	324
Byers v. McClanahan, 6 Gill & J. (Md.) 250.....	1476
Byram v. Detroit, 50 Mich. 56, 12 N. W. 912, 14 N. W. 698.....	707
Byrne v. Drain, 127 Cal. 663, 60 Pac. 433.....	669
Byrne v. Schuyler Elect. Mfg. Co., 65 Conn. 336, 31 Atl. 833, 28 L. R. A. 304.....	543
Byron v. Louisville & N. R. Co., 22 Ky. Law Rep. 1007, 59 S. W. 519	788

C

Cabbell v. Williams, 127 Ala. 320, 28 South. 405	871, 931
Cable v. Jones, 179 Mo. 606, 78 S. W. 780.....	1287
Cable v. United States Life Ins. Co., 191 U. S. 288, 24 Sup. Ct. 74, 48 L. ed. 232	1154, 1155
Cadigan v. Brown, 120 Mass. 493.....	938, 948, 949
Cadogan v. Lyric Theatre, [1894] 3 Ch. 338.....	120
Cadwallader v. Granville etc. Society, 11 Ohio, 292.....	1412
Cadwallader v. McClay, 37 Neb. 359, 40 Am. St. Rep. 496, 55 N. W. 1054	1094

Cady v. Potter, 55 Barb. 463.	65, 76, 92, 101
Cady v. Schultz, 19 R. I. 193, 61 Am. St. Rep. 763, 32 Atl. 915, 29 L. R. A. 524	996
Caffrey v. Overholser, 8 Okla. 202, 57 Pac. 206	731, 732
Cage v. Cassidy, 64 U. S. (23 How.) 109, 16 L. ed. 430.	1094
Cahn v. Johnson, 12 Tex. Civ. App. 304, 33 S. W. 1000.	116, 199
Caillard v. Estwick, 1 Anstr. 381, 385.	1415
Cain v. Elkins (W. Va.), 49 S. E. 898.	749
Cain v. Moyse, 71 Miss. 653, 15 South. 115	1399
Cairns v. Chabert, 3 Edw. Ch. 312	204
Cake v. Lewis, 8 Pa. St. 493.	1480
Cake v. Mohun, 164 U. S. 311, 17 Sup. Ct. 100, 41 L. ed. 447.	426
Cake v. Woodbury, 3 App. D. C. 60	390
Calanchini v. Branstetter, 84 Cal. 249, 24 Pac. 149	1348
Calcraft v. Roebuck, 1 Ves. Jr. 221, 224	1364, 1366
Calderwood v. Brooks, 45 Cal. 519	1246
Caldwell v. Baylis, 2 Mer. 408	806
Caldwell v. Depew, 40 Minn. 528, 42 N. W. 479	1303, 1304
Caldwell v. Robinson, 59 Fed. 658	584
Caldwell v. Wright, 88 Mo. App. 604	1186
Calhoun v. King, 5 Ala. 523.	165
Calhoun v. Lanoux, 127 U. S. 634, 8 Sup. Ct. 1345, 32 L. ed. 297	380, 384
Calhoun v. Millard, 121 N. Y. 69, 8 L. R. A. 248, 24 N. E. 27.	38
Calhoun v. Stark, 13 Tex. Civ. App. 60, 35 S. W. 410.	1212
California v. Gray (Cal.), 40 Pac. 959	360
California & O. Land Co. v. Gowen, 48 Fed. 771.	660
California Pastoral & A. Co. v. Enterprise C. & L. Co., 127 Fed. 741	969
Calkins v. Steinbach, 66 Cal. 117, 4 Pac. 1103.	1486
Call v. Barker, 12 Me. 325	1198
Call v. Cozart (Tenn. Ch. App.), 48 S. W. 312	1440
Call v. Scott, 4 Call (Va.), 402.	1492
Callaghan v. Myers, 128 U. S. 617, 9 Sup. Ct. 177, 32 L. ed. 547.	985
Callan v. Fire Dept. Commrs., 45 La. Ann. 673, 12 South. 834.	590
Callanan v. Gilman, 107 N. Y. 360, 1 Am. St. Rep. 838, 14 S. E. 264.	871, 925
Callanan v. Shaw, 19 Iowa, 183.	170
Calland v. Conway, 14 R. I. 9	1203
Callaway v. Alexander, 8 Leigh, 114, 31 Am. Dec. 640.	1112
Callister v. Kochersperger, 168 Ill. 334, 48 N. E. 156.	685
Calloway v. People's Bank, 54 Ga. 572	1401
Calmelet v. Siehl, 48 Neb. 505, 58 Am. St. Rep. 700, 67 N. W. 467	830, 943
Calmody v. Calmody, 2 Ves. Jr. 570	1182, 1214
Calvert v. State, 34 Neb. 616, 52 N. W. 687	849
Calvert v. Weddle, 19 Ky. Law Rep. 1885, 44 S. W. 648.	940
Cambridge Springs, Borough of, v. Moses, 22 Pa. Co. Ct. Rep. 637.	896
Cambridge Wharf and House Case, cited in Drewe v. Hanson, 6 Ves. 675, 678.	1364
Camden v. Dewing, 47 W. Va. 310, 81 Am. St. Rep. 797, 34 S. E. 911	1286
Camden Interstate Ry. Co. v. City of Catlettsburg, 129 Fed. 421.	1084
Cameron v. Groveland Imp. Co., 20 Wash. 169, 72 Am. St. Rep. 26, 64 Pac. 1128.	113, 115, 141, 159, 161, 164, 213, 217, 425, 1459
Cameron v. Havemeyer, 12 N. Y. Supp. 126, 25 Abb. N. C. 438.	115

Camp v. Bates, 11 Conn. 51, 27 Am. Dec. 707	817
Camp v. Bostwick, 20 Ohio St. 337, 5 Am. Rep. 669	1487, 1490
Camp v. Dixon, 112 Ga. 872, 876-877, 38 S. E. 71, 52 L. R. A. 755	823, 826, 827, 828
Camp v. Simpson, 118 Ill. 224, 8 N. E. 308	683
Camp v. Ward, 69 Vt. 286, 60 Am. St. Rep. 929, 37 Atl. 747....	1103
Campau v. Detroit Driving Club (Mich.), 98 N. W. 267	308
Campbell v. Disney, 93 Ky. 41, 18 S. W. 1027	1248, 1251
Campbell v. Foster Home Assn., 163 Pa. St. 609, 43 Am. St. Rep. 818, 30 Atl. 222, 26 L. R. A. 117.....	1499
Campbell v. Lloyd etc. Bank, [1891] 1 Ch. 136.....	166
Campbell v. London Co., 5 Hare, 519, 524	1328
Campbell v. Murphy, 2 Jones Eq. 357	1171
Campbell v. Parker, 59 N. J. Eq. 342, 45 Atl. 116.....	401
Campbell v. Poultney, 6 Gill & J. (Md.) 94, 26 Am. Dec. 559..	548
Campbell v. Rust, 85 Va. 653, 8 S. E. 664.....	1275
Campbell v. Seaman, 63 N. Y. 368, 20 Am. Rep. 567. 865, 870, 874, 922	
Campbell v. Spencer, 2 Binn. 133.....	1320
Campbell v. Western Electric Co., 113 Mich. 333, 71 N. W. 644..	1423
Campbell v. Whittington, 5 J. J. Marsh. (Ky.) 96, 20 Am. Dec. 241	1156
Campbell v. Zylonite Co., 122 N. Y. 455, 25 N. E. 853, 11 L. R. A. 596	550
Campbell Mfg. v. Manhattan Ry. Co., 49 Fed. 930, Ames, Cas. in Eq. Jur. 639	976
Campbell Printing Press & Mfg. Co. v. Marder, Luce & Co., 50 Neb. 283, 61 Am. St. Rep. 673, 69 N. W. 774.....	1121
Canary v. Russell, 9 Misc. Rep. 558, 30 N. Y. Supp. 122.....	519
Canastota Knife Co. v. Newington Tramway Co., 69 Conn. 146, 36 Atl. 1107	771, 853
Candy v. Stradley, 1 Del. Ch. 113	1202
Canedy v. Marcy, 13 Gray, 373	1142
Canfield v. Bayfield County, 74 Wis. 60, 64, 41 N. W. 437, 42 N. W. 100	750
Canfield v. Ford, 16 How. Pr. 473, 28 Barb. 336.....	1188, 1202
Canfield v. Morgan, Hopk. Ch. 224.....	97
Cannel v. Buckle, 2 P. Wms. 243	1257
Cannon v. Barry, 59 Miss. 289, 303	806, 815
Cannon v. Beatty, 19 R. I. 524, 34 Atl. 1111	1147
Cannon v. Kreipe, 14 Kan. 324	1401
Cannon v. Lomax, 29 S. C. 369, 13 Am. St. Rep. 739, 7 S. E. 529, 1 L. R. A. 637	1194
Cannon v. Trask, L. R. 20 Eq. 669	547
Canton Co. v. Baltimore & O. Ry. Co., 79 Md. 424, 29 Atl. 821-823.	1330
Cape v. Plymouth Congregational Church, 117 Wis. 150, 93 N. W. 449	561
Cape Fear Lumber Co. v. Matheson (S. C.), 48 S. E. 111.....	1304
Capehart v. Biggs, 77 N. C. 261	569
Capelli v. Dondero, 123 Cal. 324, 55 Pac. 1057	1139
Cape May v. Cape May etc. Co., 59 N. J. Eq. 59, 49 Atl. 973..	230
Capital City v. Police Commissioners, 9 Misc. Rep. 189, 29 N. Y. Supp. 804	578
Capital City Gaslight Co. v. City of Des Moines, 72 Fed. 829....	636
Capital City Mut. Fire Ins. Co. v. Boggs, 172 Pa. St. 91, 33 Atl. 349	361, 366

Capital City Waterworks Co. v. Weatherly , 108 Ala. 412, 18 South.	
841	261
Capps v. Leachman (Tex. Civ. App.), 35 S. W. 397	1130
Carbery v. Weston, 1 Brown Parl. C. 429	1267
Carberry v. West Va. & P. R. Co., 44 W. Va. 260, 28 S. E. 694 ..	1199
Carleton v. Rugg, 149 Mass. 550, 14 Am. St. Rep. 446, 22 N. E.	
55, 5 L. R. A. 193	928, 932
Carley v. Jennings, 131 Mich. 385, 91 N. W. 634	873
Carlin v. Hudson, 12 Tex. 202, 62 Am. Dec. 521	1133
Carlin v. Wolff (Mo.), 51 S. W. 679	921
Carlisle v. Carlisle, 77 Ala. 339	1315
Carlisle v. Cooper, 21 N. J. Eq. (6 C. E. Green) 576, 580	
.....	881, 917, 921, 922
Carlisle v. South Eastern Ry., 1 Macn. & G. 689	547
Carlisle v. Stevenson, 3 Md. Ch. 504	837
Carll v. Snyder (N. J. Eq.), 26 Atl. 977	526
Carlton v. Hulett, 49 Minn. 308, 51 N. W. 1053	1165
Carlton v. Newman, 77 Me. 408, 1 Atl. 194	647, 648, 701
Carlton v. Salem, 103 Mass. 141	468
Carmel Natural Gas etc. Co. v. Small, 150 Ind. 427, 47 N. E.	
11, 50 N. E. 476	550, 551
Carnahan v. Ashworth (Va.), 31 S. E. 65	1444
Carney v. Hadley, 32 Fla. 344, 37 Am. St. Rep. 101, 14 South. 4,	
22 L. R. A. 233	826, 832, 841, 845
Carolus v. Koch, 72 Mo. 645	1078
Caroon, Adm., v. Cooper et al., 63 N. C. 386	1381
Carpenter v. Capital etc. Co. 178 Ill. 29, 69 Am. St. Rep. 286, 52	
N. E. 973, 43 L. R. A. 645	874, 938
Carpenter v. Grisham, 59 Mo. 247	848
Carpenter v. Gwynn, 35 Barb. 395	843
Carpenter v. Northern Pac. R. R. Co., 75 Fed. 850	343
Carpenter v. Strange, 141 U. S. 87, 106, 11 Sup. Ct. 960, 35 L. ed.	
640	25
Carr v. Gordon, 82 Fed. 373	594, 595
Carrington v. Holabird, 17 Conn. 530, 19 Conn. 84	1100
Carroll v. Brown, 28 Gratt. 791	1227
Carroll v. Campbell, 108 Mo. 550, 17 S. W. 884	1001, 1003
Carroll v. Demarest, 58 N. Y. Supp. 1028, 42 App. Div. 155	77
Carroll v. Safford, 3 How. 463, 11 L. ed. 681	1231
Carrow v. Ferrior, L. R. 3 Ch. App. 719	154, 155
Carson v. Dunham, 149 Mass. 52, 14 Am. St. Rep. 397, 20 N. E.	
312, 3 L. R. A. 203	1127
Carson v. Electric etc. Co., 85 Iowa, 44, 51 N. W. 1144	817
Carswell v. Farmers' Loan etc. Co., 74 Fed. 88, 20 C. C. A. 282,	
43 U. S. App. 300	391, 392
Carter v. Bailey, 64 Me. 458, 18 Am. Rep. 273	1517
Carter v. Black, 4 Dev. & B. (N. C.) 425	1477
Carter v. Carter, 5 Munf. 108	1213
Carter v. Chicago, 57 Ill. 283	601
Carter v. Dean and Chapter of Ely, 7 Sim. 211	1335, 1338
Carter v. Ferguson, 58 Hun, 569, 12 N. Y. Supp. 580	521
Carter v. Fidelity & D. Co., 134 Ala. 369, 92 Am. St. Rep. 41, 32	
South. 632	1489
Carter v. Hightower, 79 Tex. 135, 15 S. W. 223	199
Carter v. Leonard, 65 Neb. 670, 91 N. W. 574	1145

Carter v. Neal, 24 Ga. 346, 71 Am. Dec. 136	1402
Carter v. Steyer, 93 Iowa, 533, 61 N. W. 956.....	928
Carter v. Taylor, 3 Head, 30.....	1201, 1226
Carter v. Williams, L. R. 9 Eq. 678.....	506
Carteret v. Petty, 2 Swanst. 323.....	31, 32
Cartwright v. McFadden, 24 Kan. 662	1245
Cartwright v. Pultney, 2 Atk. 380.....	1182, 1215
Caruthers v. Harnett, 67 Tex. 127, 2 S. W. 523	628
Caruthers v. Hartsfield, 3 Yerg. 366, 24 Am. Dec. 580.....	1124
Carvalho v. Brooklyn etc. Co., 56 App. Div. 522, 67 N. Y. Supp. 539	973
Carver v. Peck, 131 Mass. 292 ..	31
Cary v. Dalhoff Const. Co., 126 Fed. 584	150
Cary v. Domestic Spring Bed Co., 27 Fed. 299	982
Cary v. Folsom, 14 Ohio, 365	1486
Cary v. Lovell Mfg. Co., 24 Fed. 141	982
Cascaden v. Waterloo, 106 Iowa, 673, 77 N. W. 333.....	588
Case v. Beauregard, 101 U. S. 688, 25 L. ed. 1004....	1433, 1457, 1469
Case v. Cayuga Co., 88 Hun, 59, 34 N. Y. Supp. 595.....	619
Casey v. Burt County, 59 Neb. 624, 81 N. W. 851.....	717
Casey v. Cincinnati Typographical Union, 45 Fed. 135, 12 L. R. A. 193.....	1018, 1030, 1031, 1039, 1057
Casey v. La Societe de Credit Mobilier, 2 Woods, 77, Fed. Cas. No. 2496	366
Cason v. Harrison, 135 Ind. 330, 35 N. E. 268.....	691
Cass v. Sutherland, 98 Wis. 551, 74 N. W. 337.....	309, 312
Cassady v. Grimmelman, 108 Iowa, 695, 77 N. W. 1067.....	1418
Cassetty v. Capps, 3 Tenn. Ch. 524	151
Cassey v. Fitton (1679), 2 Hargrave, Juridical Arguments, 296..	1259
Cassidy v. Automatic Time-Stamp Co., 185 Ill. 431, 56 N. E. 1116..	1117
Cassilear v. Simons, 8 Paige (N. Y.), 273.....	300, 301, 303
Castellain v. Preston, L. R. 11 Q. B. D. 380	1392
Castle v. Bell Tel. Co. of Buffalo, 30 Misc. Rep. 38, 61 N. Y. Supp. 743.....	783, 942, 945
Castle v. Hillman, 70 Ark. 157, 66 S. W. 648.....	1226
Castle v. Wilkinson, L. R. 5 Ch. App. 534	1368
Castlemain v. Craven, 22 Vin. Abr. 523	801, 806, 814, 815
Castleman v. Templeman, 87 Md. 546, 67 Am. St. Rep. 363, 40 Atl. 275, 41 L. R. A. 367.....	440, 447
Castro v. Barry, 79 Cal. 446, 21 Pac. 946	1242, 1248, 1251
Caswell v. Gibbs, 33 Mich. 331	524
Caswell v. Hazard, 121 N. Y. 492, 18 Am. St. Rep. 833, 24 N. E. 707	991
Cates v. Allen, 149 U. S. 457, 13 Sup. Ct. 884, 37 L. ed. 804....	1426
Cates v. Johnson, 109 Ala. 126, 19 South. 416.....	1190
Cathcart v. Robinson, 5 Pet. 264, 8 L. ed. 120	1314
Catholic etc. Co. v. Ferguson, 7 S. D. 503, 64 N. W. 539	850
Catlin v. Christie, 15 Colo. App. 291, 63 Pac. 328	586
Catlin v. Doughty, 12 How. Pr. 457	1409
Catlin v. Eagle Bank, 6 Conn. 233	1455
Catlin v. Valentine, 9 Paige, 575, 38 Am. Dec. 567	917
Catlin v. Wilcox Silver Plate Co., 123 Ind. 477, 24 N. E. 250, 18 Am. St. Rep. 338, 8 L. R. A. 62.....	443, 445, 446
Cato v. Thompson, 9 Q. B. D. 616	1366, 1371
Caton v. Caton, L. R. 1 Ch. App. 137	1361
Caton v. Lambert, 1 Neb. 339	1479

Catt v. Tourle, 4 Ch. App. 654, 660.....	1300
Cattell v. Lowry, 45 Iowa, 478.....	692
Cauble v. Craig, 94 Mo. App. 675, 69 S. W. 49.....	1004
Cauble v. Worsham, 96 Tex. 86, 97 Am. St. Rep. 871, 70 S. W. 737.....	1360
Cauuffman v. Schuler, 123 Fed. 205	994, 995
Cave v. Crafts, 53 Cal. 135	941
Cayce v. Powell, 20 Tex. 767, 73 Am. Dec. 211.....	1102
Cayuta Wheel & Foundry Co. v. Kennedy Valve Mfg. Co., 127 Fed. 355, Ames, Cas. in Eq. Jur. 638	981
C. B. Keough Mfg. Co. v. Whiston, 14 N. Y. Supp. 344.....	174
Cedar Rapids Nat. Bank v. Lavery, 110 Iowa, 575, 80 Am. St. Rep. 328, 81 N. W. 775	1443
Celluloid Mfg. v. Cellonite Mfg. Co., 32 Fed. 94	998
Center & W. Gravel Road Co. v. Black, 32 Ind. 468	686
Center Tp. v. Board of Comm., 110 Ind. 580, 10 N. E. 291.....	1077, 1078
Center Tp. v. Hunt, 16 Kan. 430	695
Central Branch U. P. R. Co. v. Atchison T. & S. F. R. Co., 28 Kan. 463	767
Central Covington v. Park, 21 Ky. Law Rep. 1847, 56 S. W. 650	700
Central Crosstown R. Co. v. Metropolitan etc. Co., 16 App. Div. 229, 44 N. Y. Supp. 752.....	931
Central Nat. Bank v. Stevens, 169 U. S. 432, 18 Sup. Ct. 403, 837, 42 L. ed. 807	1081
Central Pass. Ry. Co. v. Philadelphia etc. Co., 95 Md. 482, 52 Atl. 752.....	836
Central Ry. Co. v. Collins, 40 Ga. 582	542
Central R. Co. v. Farmers' L. & T. Co., 125 Fed. 1001, 60 C. C. A. 400	452
Central Trust Co. v. Chattanooga, R. & G. R. Co., 94 Fed. 275, 36 C. C. A. 241	252
Central Trust Co. v. Chattanooga etc. R. R. Co., 89 Fed. 388..	424
Central Trust Co. v. Chattanooga R. & C. R. Co., 68 Fed. 685....	308
Central Trust Co. v. Chattanooga S. R. Co., 69 Fed. 295.....	413, 414
Central Trust Co. v. Citizens' St. R. Co., 80 Fed. 218 ..	1084, 1085
Central Trust Co. v. Clark, 81 Fed. 269, 26 C. C. A. 397.....	419
Central Trust Co. v. Denver & Rio Grande R. Co., 97 Fed. 239, 38 C. C. A. 143	411
Central Trust Co. v. East Tennessee Land Co., 79 Fed. 19....	391
Central Trust Co. v. East Tennessee, V. & G. R. Co., 30 Fed. 895	424, 453
Central Trust Co. v. East Tenn., V. & G. R. Co., 59 Fed. 523. .	338, 339
Central Trust Co. v. East Tenn., V. & G. R. Co., 80 Fed. 624, 26 C. C. A. 30	416, 420
Central Trust Co. v. Evans, 43 U. S. App. 214, 73 Fed. 562, 19 C. C. A. 563	1082
Central Trust Co. v. Moran, 56 Minn. 188, 57 N. W. 471, 29 L. R. A. 212.....	1134
Central Trust Co. v. New York City & N. R. Co., 110 N. Y. 250, 18 N. E. 92, 1 L. R. A. 260	408
Central Trust Co. v. St. Louis etc. R. Co., 40 Fed. 426	340
Central Trust Co. v. St. Louis etc. R. Co., 41 Fed. 551.....	342, 416
Central Trust Co. v. Thurman, 94 Ga. 735, 20 S. E. 141	409
Central Trust Co. v. Utah Cent. R. Co., 16 Utah, 12, 50 Pac. 813	416, 417
Central Trust Co. v. Wabash, St. L. & P. R. Co., 23 Fed. 858....	346

Central Trust Co. v. Wabash etc. Co., 26 Fed. 11.....	321
Central Trust Co. v. Wabash, St. L. & P. Ry. Co., 29 Fed. 618, 620.....	208, 451
Central Trust Co. v. Western N. C. R. Co., 112 Fed. 471.....	1079
Central Trust Co. v. Worcester Cycle Mfg. Co., 93 Fed. 712, 35 C. C. A. 547	287
Cereghino v. Or. etc. Co., 26 Utah, 467, 99 Am. St. Rep. 843, 73 Pac. 634	931
C. F. Simmons Med. Co. v. Mansfield Drug Co., 93 Tenn. 84, 23 S. W. 165	1000
C. F. Simmons Medicine Co. v. Simmons, 81 Fed. 163	490, 994
Chadron v. Anderson (Wyo.), 48 Pac. 197	1096
Chadron Banking Co. v. Mahoney, 43 Neb. 214, 61 N. W. 594...173,	178
Chadron L. & B. Assn. v. Smith, 58 Neb. 469, 78 N. W. 938...181	
Chadron Opera House Co. v. Loomer (Neb.), 99 N. W. 649...996	
Chadwick v. Chadwick, 121 Ala. 580, 25 South. 631.....	1293
Chadwick v. Covell, 151 Mass. 190, 21 Am. St. Rep. 442, 23 N. E. 1068, 6 L. R. A. 839.....	991
Chafee v. Fourth Nat. Bank, 71 Me. 514, 36 Am. Rep. 345....	1136
Chafee v. Quidnick Co., 13 R. I. 442.....	303, 305, 450
Chaffee v. Conway (Wis.), 103 N. W. 269	1517
Chain Belt Co. v. Von Spreckelsen, 117 Wis. 106, 94 N. W. 78..	521
Chalk v. Wyott, 3 Mer. 688	917
Challiss v. Commrs. of Atchison County, 15 Kan. 49.....	694
Challiss v. Rigg, 49 Kan. 119, 30 Pac. 190	694
Chalmers v. Sheehy, 132 Cal. 459, 84 Am. St. Rep. 62, 64 Pac. 709..	1426
Chalon v. Walker, 7 La. Ann. 477	1203
Chamberlain, Ex parte, 55 Fed. 704	321, 409, 663
Chamberlain v. Douglas, 24 App. Div. 582, 48 N. Y. Supp. 710, 915, 916	
Chamberlain v. Greenleaf, 4 Abb. N. C. 92	281, 284
Chamberlain v. O'Connor, 1 E. D. Smith, 665	82
Chamberlain v. Rochester S. P. V. Co., 7 Hun, 557	245, 297
Chamberlain v. Tampa, 40 Fla. 74, 23 South. 572	609
Chamberlayn v. Dummer, 1 Bro. C. C. 166	813
Chamberlayne v. Temple, 2 Rand. 384, 14 Am. Dec. 786	1435
Chamberlin v. Robertson, 31 Iowa, 408	1294
Chambers v. Adair, 23 Ky. Law Rep. 373, 62 S. W. 1128.....	699
Chambers v. Alabama Iron Co., 67 Ala. 353	803, 817
Chambers v. Cramer, 49 W. Va. 395, 38 S. E. 691, 54 L. R. A. 545.	871
Chambers v. Gallup, 30 Tex. Civ. App. 424, 70 S. W. 1009	1120
Chambers v. Jones, 72 Ill. 275	1500
Chambers v. Penland, 78 N. C. 53	1124
Champ v. Kendrick, 130 Ind. 549, 30 N. E. 787.....	828, 834
Champion v. Brown, 6 Johns. Ch. 398, 10 Am. Dec. 343.....	1270
Champion v. Miller, 2 Jones Eq. (55 N. C.) 194	1077
Chandler v. Brainard, 31 Mass. (14 Pick.) 285	1487
Chandler v. Colecord, 1 Okla. 260, 32 Pac. 330	1435
Chandler v. Graham, 123 Mich. 327, 82 N. W. 814	1244
Channon v. Stewart, 103 Ill. 541	1521
Chapin v. Brown, 83 Iowa, 156, 32 Am. St. Rep. 297, 48 N. W. 1074, 12 L. R. A. 428	527
Chaplin v. Stoddart, 30 Hun, 300	490
Chapman v. Atlantic Trust Co., 56 C. C. A. 61, 119 Fed. 257....	430
Chapman v. Brewer, 114 U. S. 158, 5 Sup. Ct. 799, 29 L. ed. 83	1079, 1227

Chapman v. Dunwell, 115 Iowa, 533, 88 N. W. 1067.....	1148
Chapman v. Ferry, 12 Fed. 693.....	985
Chapman v. Rochester, 110 N. Y. 273, 6 Am. St. Rep. 366, 18 N. E. 88, 1 L. R. A. 296.....	50, 869, 965
Chapman v. Toy Long, 4 Saw. 28, Fed. Cas. No. 2610.....	846
Chappell v. Akin, 39 Ga. 177.....	165
Chappell v. Boyd, 56 Ga. 578.....	197
Chappell v. Clarke, 92 Md. 98, 48 Atl. 36.....	568
Chappell v. Jasper County etc. Co., 31 Ind. App. 170, 66 N. E. 515.....	837
Chard v. Stone, 7 Cal. 117.....	1002
Charge to the Grand Jury, In re (1894), 62 Fed. 828.....	1045
Charles v. City of Marion, 98 Fed. 166.....	664
Chas. C. Taft Co. v. Bounani, 110 Iowa, 739, 81 N. W. 469.....	1116
Charles Simon's Sons Co. v. Maryland T. & T. Co. (Md.), 57 Atl. 193.....	1063
Charlton v. Columbia R. E. Co., 64 N. J. Eq. 631, 54 Atl. 444.....	1354
Charnock v. Court, [1899] 2 Ch. D. 35.....	1025
Chase v. Chase, 50 N. J. Eq. 143, 24 Atl. 914.....	1156
Chase v. Chase, 20 R. I. 202, 37 Atl. 804.....	40, 1161
Chase v. Cheney, 58 Ill. 509, 11 Am. Rep. 95.....	558
Chase v. City Treasurer, 122 Cal. 540, 55 Pac. 414.....	669, 670
Chase v. Ladd, 155 Mass. 417, 29 N. E. 637.....	80, 81
Chasemore v. Richards, 7 H. L. Cas. 349, 387.....	898
Chase's Case, 1 Bland (Md.), 206, 17 Am. Dec. 277.....	107, 111, 112, 160, 1168
Chastey v. Ackland, [1895], L. R. 2 Ch. D. 339.....	878
Chautauque County Bank v. Risley, 19 N. Y. 369, 75 Am. Dec. 347.....	309, 315, 317
Chautauqua County Bank v. White, 6 N. Y. 236, 57 Am. Dec. 442.....	189, 313
Cheatham v. Crews, 88 N. C. 38.....	1210
Cheavin v. Walker, L. R. 5 Ch. D. 850.....	1000
Cheesebrough v. Millard, 7 Johns. Ch. 409, 7 Am. Dec. 494.....	1404
Cheeseman v. Thorne, 1 Edw. Ch. 629.....	1207
Cheever v. Hodgson, 9 Mo. App. 565.....	92
Chemical Nat. Bank of Chicago v. Hartford Deposit, 156 Ill. 522, 41 N. E. 225.....	385
Chenault v. Bush, 84 Ky. 528, 2 S. W. 160.....	1483
Cheney v. Libby, 134 U. S. 68, 19 Sup. Ct. 498, 33 L. ed. 818.....	1341
Cheney v. Maumes Cycle Co., 64 Ohio St. 205, 60 N. E. 207.....	373
Cheney v. Nathan, 110 Ala. 254, 266, 55 Am. St. Rep. 26, 20 South. 99.....	1253
Cherry v. Matthews, 25 Or. 484, 36 Pac. 529.....	766
Cherry v. Stein, 11 Md. 1.....	874
Cherry v. Western Washington I. E. Co., 11 Wash. 586, 40 Pac. 136.....	309, 319
Cherry v. Wilson, 78 N. C. 164.....	1477
Cherry Creek v. Becker, 123 N. Y. 161, 25 N. E. 369.....	1160
Cherry Point etc. Co. v. Nelson, 25 Wash. 558, 66 Pac. 55.....	931, 973
Chesapeake & O. Co. v. Fire Creek Coal & Coke Co. et al., 119 Fed. 942.....	1034
Chesapeake & O. R. Co. v. Miller, 19 W. Va. 408.....	646
Chesapeake & O. Ry. Co. v. Swayze, 60 N. J. Eq. 417, 47 Atl. 28.....	450
Chesapeake & P. Tel. Co. v. Mackenzie, 74 Md. 36, 28 Am. St. Rep. 219, 21 Atl. 690.....	782, 783

Chesley v. King, 74 Me. 164, 43 Am. Rep. 569.....	898
Chesman v. Cumming, 142 Mass. 65, 7 N. E. 13, 14.....	1321
Chestatee Pyrites Co. v. Cavenders Co., 118 Ga. 255, 45 S. E. 267.....	906
Chestatee Pyrites Co. v. Cavenders Creek G. M. Co., 119 Ga. 354, 100 Am. St. Rep. 174, 46 S. E. 422.....	769
Chestnutwood v. Hood, 68 Ill. 132.....	622, 623
Chetwood v. Coffin, 30 N. J. Eq. 450.....	172
Chew v. Bank of Baltimore, 14 Md. 299.....	1397
Chezum v. Claypool, 22 Wash. 498, 79 Am. St. Rep. 955, 61 Pac. 157.....	1124
Chezum v. McBride, 21 Wash. 558, 58 Pac. 1067.....	44
Chicago v. Collins, 175 Ill. 445, 67 Am. St. Rep. 224, 51 N. E. 907, 49 L. R. A. 408.....	633
Chicago v. Evans, 24 Ill. 52.....	601
Chicago v. Mohr (Ill.), 74 N. E. 1056.....	627
Chicago v. Nichols, 177 Ill. 97, 52 N. E. 359.....	609
Chicago v. Rogers Park Water Co., 214 Ill. 212, 73 N. E. 375....	636
Chicago v. Ward, 169 Ill. 392, 61 Am. St. Rep. 185, 38 L. R. A. 849, 48 N. E. 927.....	942
Chicago v. Wright, 69 Ill. 318.....	767
Chicago & A. Bridge Co. v. Anglo-American etc. Co., 46 Fed. 584.....	1430
Chicago & A. Bridge Co. v. Fowler, 55 Kan. 17, 39 Pac. 727....	1427
Chicago & A. Oil etc. Co. v. U. S. Petroleum Co., 57 Pa. St. 83.....	107, 158
Chicago & A. R. Co. v. Brandan, 81 Mo. App. 1.....	837
Chicago & A. R. Co. v. Green, 114 Fed. 676.....	1142
Chicago & A. R. Co. v. Maddox, 92 Mo. 469, 4 S. W. 417.....	767
Chicago & A. R. Co. v. New York, L. E. & W. R. Co., 24 Fed. 516.....	497, 498, 535
Chicago & E. I. R. Co. v. Hay, 119 Ill. 493, 10 N. E. 29.....	1111
Chicago & L. E. R. Co. v. St. Clair, 144 Ind. 371, 42 N. E. 225....	259
Chicago & M. Electric Ry. Co. v. Vollman, 213 Ill. 609, 73 N. E. 360.....	678
Chicago & N. W. R. Co. v. Chicago, 151 Ill. 348, 37 N. E. 842....	768
Chicago & N. W. R. Co. v. Dey, 35 Fed. 866, 1 L. R. A. 744....	586
Chicago & N. W. R. Co. v. Forest County, 95 Wis. 80, 70 N. W. 77.....	749, 752
Chicago & N. W. R. Co. v. Langlade County, 104 Wis. 373, 80 N. W. 598.....	753
Chicago & S. E. R. Co. v. Cason, 133 Ind. 49, 32 N. E. 827....	261, 268, 275
Chicago Arch. Iron Works v. McKey, 93 Ill. App. 244.....	368
Chicago Attachment Co. v. Davis S. M. Co., 142 Ill. 171, 31 N. E. 438, 15 L. R. A. 754.....	1347
Chicago, B. & Q. R. Co. v. Board of Commissioners, 54 Kan. 781, 39 Pac. 1039.....	694
Chicago, B. & Q. R. Co. v. Board of Commissioners of Norton Co., 67 Fed. 413, 14 C. C. A. 458.....	662
Chicago, B. & Q. R. Co. v. Board of Commissioners of Republic Co., 67 Fed. 411, 14 C. C. A. 456.....	661
Chicago, B. & Q. R. Co. v. Cass County, 51 Neb. 369, 70 N. W. 955.....	715, 716
Chicago, B. & Q. R. Co. v. Clerk of Norton County, 55 Kan. 386, 40 Pac. 654.....	694
Chicago, B. & Q. R. Co. v. Cole, 75 Ill. 591.....	676, 684, 685

Chicago, B. & Q. R. Co. v. Frary, 22 Ill. 34.....	677
Chicago, B. & Q. R. Co. v. Ottawa, 148 Ill. 397, 36 N. E. 80....	632
Chicago, B. & Q. R. Co. v. Porter, 72 Iowa, 426, 34 N. W. 286.	940
Chicago, B. & Q. R. Co. v. West Chicago St. R. Co., 156 Ill. 255, 40 N. E. 1008, 29 L. R. A. 485.....	769
Chicago, B. & W. R. Co. v. Nebraska City, 53 Neb. 453, 73 N. W. 952.....	715, 716
Chicago Fire Proofing Co. v. Park Nat. Bank, 145 Ill. 481, 32 N. E. 534.....	360
Chicago, M. & St. P. R. v. Durant, 44 Minn. 361, 46 N. W. 676	1365, 1368
Chicago M. & St. P. Ry. v. Keokuk etc. Packet Co., 108 Ill. 317, 48 Am. Rep. 557.....	444
Chicago M. & St. P. R. Co. v. Phillips, 111 Iowa, 377, 82 N. W. 787.....	691
Chicago M. G. L. & C. Co. v. Town of Lake, 130 Ill. 42, 22 N. E. 616.....	496, 499
Chicago, R. I. & P. Ry. Co. v. St. Joseph Union Depot Co., 92 Fed. 22.....	1079
Chicago, R. I. & P. Ry. Co. v. Union Pac. Ry. Co., 47 Fed. 15....	1281
Chicago Sugar Ref. Co., In re, 87 Fed. 750, 31 C. C. A. 221....	984
Chicago T. & M. R. Co. v. Titterington, 84 Tex. 218, 31 Am. St. Rep. 39, 19 S. W. 472.....	1157, 1158, 1162
Chicago Title & Trust Co. v. Smith, 158 Ill. 417, 425, 41 N. E. 1076.....	292
Chicago Union Nat. Bank v. Bank of K. C., 136 U. S. 223, 10 Sup. Ct. 1013, 34 L. ed 341.....	286, 287
Chickering v. Chickering & Sons, 120 Fed. 69, 56 C. C. A. 475..	997
Child v. Douglas, Kay, 560.....	503
Child v. Mann, L. R. 3 Eq. 806.....	94
Childress v. State Trust Co. (Tex. Civ. App.), 32 S. W. 330.....	246
Childs v. N. B. Carlstein Co., 76 Fed. 86.....	1410, 1426
Chilhowie v. Gardiner, 79 Va. 305.....	1296, 1329
Chinnock v. Paterson, P. & S. Tel. Co., 112 Fed. 531, 50 C. C. A. 384.....	978
Chipman v. Morrill, 20 Cal. 130.....	1483
Chippewa Bridge Co. v. City of Durand (Wis.), 99 N. W. 603..	627
Chissum v. Dewes, 5 Russ. 29.....	1274
Chiswell v. Morris, 14 N. J. Eq. 101.....	1169, 1170
Chittenden v. Wurster, 152 N. Y. 345, 46 N. E. 857, 37 L. R. A. 809.....	620
Choctaw Coal & M. Co. v. Williams-Echols Dry Goods Co. (Ark.), 87 S. W. 632.....	446
Cholmondeley v. Clinton, 2 Mer. 352.....	1143
Choppin v. Dauplin, 48 La. Ann. 1217, 55 Am. St. Rep. 313, 20 South. 681, 33 L. R. A. 133.....	828
Choteau v. Jones, 11 Ill. 300.....	1480
Choynski v. Cohen, 39 Cal. 501, 2 Am. Rep. 476.....	991
Chrisman v. Divinia, 141 Mo. 122, 41 S. W. 920.....	1184
Christensen v. Eno, 106 N. Y. 97, 60 Am. Rep. 429, 12 N. E. 648.....	1462, 1467
Christensen v. Hollingsworth, 6 Idaho, 87, 96 Am. St. Rep. 256, 53 Pac. 211.....	1147, 1149
Christian v. National L. I. Co., 62 Mo. App. 35.....	98
Christian v. Vance, 41 W. Va. 754, 24 S. E. 596.....	1162
Christian Jensen Co., In re, 128 N. Y. 550, 28 N. E. 665.....	294, 305, 306, 325, 326

Christie v. Burns, 83 Ill. App. 514.....	179
Christie v. Davie, [1893] 1 Ch. 316.....	902
Christie v. Melden, 23 W. Va. 667.....	747, 748
Christman v. Colbert, 23 Minn. 509, 24 N. W. 301.....	1147
Christman v. Howe (Ind.), 70 N. E. 809.....	830
Christopher v. Mayer, 13 Barb. 567.....	617
Christopher Co. v. 23d St. Co., 149 N. Y. 51, 43 N. E. 538.....	1141
Christy, Ex parte, 44 U. S. (3 How.) 292, 11 L. ed. 603.....	1079
Church v. Church, 3 Sandf. Ch. 437.....	1205
Church v. Gallie (Ark.), 88 S. W. 307.....	1106
Church v. Haeger (Com. Pl. S. T.), 33 N. Y. Supp. 47.....	492
Church v. Joint School District, 55 Wis. 399, 13 N. W. 272.....	767
Church v. Smith, 39 Wis. 492.....	1386
Church v. Winton, 196 Pa. St. 107, 46 Atl. 363.....	36, 56
Churchill v. Beethe, 48 Neb. 87, 66 N. W. 992, 35 L. R. A. 442....	782
Church of Christ v. Reorganized Church etc., 70 Fed. 179, 17 C. C. A. 387, 36 U. S. App. 110.....	36, 48, 55
Chute v. Quincy, 156 Mass. 189, 30 N. E. 550.....	1303, 1305
Ciancimino v. Man, 48 N. Y. St. Rep. 697, 20 N. Y. Supp. 702....	551
Cicero Lumber Co. v. Town of Cicero, 176 Ill. 9, 68 Am. St. Rep. 155, 51 N. E. 758, 42 L. R. A. 696.....	633
Cincinnati v. Hafer, 49 Ohio St. 60, 30 N. E. 197.....	1417, 1428
Cincinnati H. & D. R. Co. v. McKeen, 64 Fed. 36, 24 U. S. App. 218, 12 C. C. A. 14.....	1155
Cincinnati St. R. Co. v. Smith, 29 Ohio St. 291.....	601
Cincinnati Volksblatt Co. v. Hoffmeister, 62 Ohio St. 189, 78 Am. St. Rep. 707, 56 N. E. 1033, 48 L. R. A. 732.....	550
Citizens' Bank of Wichita v. Farwell, 63 Fed. 117, 11 C. C. A. 108, 27 U. S. App. 268.....	1454
Citizens' Coach Co. v. Camden etc. Co., 29 N. J. Eq. (2 Stew.) 299.....	846
Citizens' Com. & Sav. Bank v. Bay Circuit Judge, 110 Mich. 633, 68 N. W. 649.....	308, 330
Citizens' Gaslight Co. v. Louisville Gas. Co., 81 Ky. 263.....	1003
Citizens' Nat. Bank v. Interior L. & I. Co., 14 Tex. Civ. App. 301, 37 S. W. 447.....	1136
Citizens' Nat. Bank v. Judy, 146 Ind. 322, 43 N. E. 259.....	
.....40, 1139, 1140, 1141, 1144, 1145, 1146	
Citizens' Nat. Bank v. Minge, 49 Minn. 454, 52 N. W. 44.....	202
Citizens' Sav. Bank v. Ingham, Circuit Judge, 98 Mich. 173, 57 N. W. 121.....	346
Citizens' Sav. Bank v. Person, 98 Mich. 173, 57 N. W. 121....	346
City Bank v. Bangs, 2 Paige, 570.....	73, 82
City Bank v. Skelton, 2 Blatchf. 14, Fed. Cas. No. 2739.....	89
City Council of Augusta v. Georgia R. & B. Co., 98 Ga. 161, 26 S. E. 499.....	768
City Council of Montgomery v. Lemle, 121 Ala. 609, 25 South. 919.....	762
City Council of Montgomery v. Parker, 114 Ala. 118, 62 Am. St. Rep. 95, 21 South. 452.....	931
City Nat. Bank v. Bridges, 114 N. C. 381, 19 S. E. 642.....	162
City Nat. Bank v. Dudgeon, 65 Ill. 11.....	1505
City Nat. Bank v. Dunham, 18 Tex. Civ. App. 184, 44 S. W. 605..	110
City Pottery Co. v. Yates, 37 N. J. Eq. 543.....	242
Clad v. Paist, 181 Pa. St. 148, 37 Atl. 194.....	33
Claggett v. Salmon, 5 Gill & J. (Md.) 314.....	571, 816

Clagon v. Veasey, 7 Ired. Eq. 173.....	803
Clancy v. Flusky, 187 Ill. 605, 58 N. E. 594, 5 L. R. A. 277.....	1360
Clarendon, Earl of, v. Hornby, 1 P. Wms. 446.....	1210
Clarity v. Sheridan, 91 Iowa, 304, 59 N. W. 52.....	1197
Clark v. Bert, 2 Kan. App. 407, 42 Pac. 733.....	1432
Clark v. Bever, 139 U. S. 96, 11 Sup. Ct. 468, 35 L. ed. 88.....	1467
Clark v. Brown, 119 Fed. 130, 57 C. C. A. 76.....	428, 432
Clark v. Central R. & B. Co., 66 Fed. 803, 14 C. C. A. 112.....	410, 414, 415, 419
Clark v. Clark, 11 Abb. N. C. 333.....	264
Clark v. Clark, 49 Cal. 586.....	1258
Clark v. Covenant Ins. Co., 52 Mo. 272.....	1226, 1233
Clark v. Darlington, 7 S. D. 148, 58 Am. St. Rep. 835, 63 N. W. 771.....	1248, 1251
Clark v. Davenport, 95 N. Y. 477.....	1235
Clark v. Dew, 1 Russ. & M. 103.....	153
Clark v. Dunkirk, 12 Hun, 181; affirmed, 75 N. Y. 612.....	723
Clark v. Figgins, 31 W. Va. 157, 13 Am. St. Rep. 860, 5 S. F. 643	1447
Clark v. Flint, 22 Pick. 231, 33 Am. Dec. 733.....	1266
Clark v. Glidden, 60 Vt. 702, 15 Atl. 358.....	942
Clark v. Hadley (Tenn. Ch.), 64 S. W. 403.....	1143
Clark v. Hindman (Or.), 79 Pac. 56.....	1144
Clark v. Hutzler, 96 Va. 73, 30 S. E. 469.....	1313
Clark v. Interstate Ind. Tel. Co. (Neb.), 101 N. W. 977.....	611
Clark v. Knowles (1904), 187 Mass. 35, 105 Am. St. Rep. 376, 72 N. E. 352.....	1473
Clark v. Lawrence, 59 N. C. 83, 78 Am. Dec. 241.....	884
Clark v. Lee, 58 Minn. 410, 59 N. W. 970.....	469
Clark v. Marlow, 149 Ind. 41, 48 N. E. 359.....	1499, 1507
Clark v. Martin, 40 Pa. St. 289.....	501, 504
Clark v. McGhee, 87 Fed. 789, 31 C. C. A. 321.....	321, 663
Clark v. National Linseed Oil Co., 105 Fed. 787, 792, 45 C. C. A. 53.....	207
Clark v. New York, 32 Misc. Rep. 52, 66 N. Y. Supp. 103.....	942
Clark v. Raymond, 84 Iowa, 251, 50 N. W. 1068.....	1431
Clark v. Raymond, 86 Iowa, 661, 53 N. W. 354.....	115, 189
Clark v. Ridgeley, 1 Md. Ch. 70.....	110
Clark v. Rochester R. R. Co., 18 Barb. 350.....	1316, 1317
Clark v. Sayers, 48 W. Va. 33, 35 S. E. 882.....	1110
Clark v. Seagraves, 186 Mass. 430, 71 N. E. 813.....	30
Clark v. Stewart, 56 Wis. 154, 14 N. W. 54.....	1201
Clark v. Wall (Mont.), 79 Pac. 1052.....	833
Clark v. Wooster, 119 U. S. 322, 7 Sup. Ct. 217, 30 L. ed. 392....	973
Clark v. Worcester, 167 Mass. 81, 44 N. E. 1982.....	704
Clark v. Wright, 24 S. C. 526.....	1398, 1400
Clarke v. Byne, 13 Ves. 383.....	90
Clarke v. Central R. & B. Co., 66 Fed. 16.....	393, 434
Clarke v. Clark, L. R. 1 Ch. 16.....	942
Clarke v. Ganz, 21 Minn. 387.....	707, 708
Clarke v. Hawkins, 5 R. I. 219.....	369
Clarke v. Price, [1819] 2 Wils. Ch. 157.....	520
Clarke v. Ramuz, [1891] L. R. 2 Q. B. 456.....	1388, 1389
Clarke v. Webb, 2 Hen. & M. (Va.), 8.....	1412
Clarksdale, Town of, v. Broadlus, 77 Miss. 667, 28 South. 954....	623
Clarkson v. Depeyster, 3 Paige, 320.....	1445
Cloughton v. Cloughton, 70 Miss. 384, 12 South. 340.....	1200

Clawson Lumber Co. v. Jones, 20 Tex. Civ. App. 208, 49 S. W. 909.....	741
Clayton v. Ashdown, 9 Vin. Abr. 393, pl. 2.....	1294
Clayton v. Cookes, 2 Atk. 449.....	1176
Clayton v. Shoemaker, 67 Md. 216, 9 Atl. 635.....	846
Clayton County v. Herwig, 100 Iowa, 631, 69 N. W. 1035.....	930
Cleary v. Folger, 84 Cal. 316, 320, 18 Am. St. Rep. 187, 24 Pac. 280.....	1334, 1342
Cleaver v. Mahanke, 120 Iowa, 77, 94 N. W. 279.....	956
Clee v. Village of Trenton, 108 Mich. 293, 66 N. W. 48.....	704
Clegg v. Fishwick, 1 Maen. & G. 294.....	149
Clegg v. Hands, L. R. 44 Ch. D. 503.....	515
Cleghorn v. Postlewaite, 43 Ill. 428.....	685
Cleghorn v. Zumwalt, 83 Cal. 155, 23 Pac. 294.....	1141, 1143
Clem v. Meserole, 44 Fla. 191, 32 South. 783.....	1232, 1234
Clemens v. Clemens, 37 N. Y. 59.....	1182
Clemens v. Connecticut Mut. Life Ins. Co. (Mo.), 82 S. W. 1.....	774, 786
Clement v. Tillman, 79 Ga. 451, 11 Am. St. Rep. 441, 5 S. E. 194.....	25
Clement v. Wheeler, 25 N. H. 361.....	805
Clement v. Young-McShea Amusement Co. (N. J. Ch.), 60 Atl. 419.....	1086
Clements v. Reid, 17 Miss. (9 Smedes & M.) 535.....	1313
Clements v. Welles, L. R. 1 Eq. 200.....	513
Clemmitt v. Watson, 14 Ind. App. 38, 42 N. E. 367.....	1040
Clemmons v. Cox, 116 Ala. 567, 23 South. 79.....	1231
Clerk v. Wright, 1 Atk. 12.....	1349
Cleveland v. Burrill, 25 Barb. 532.....	29
Cleveland v. Citizens' etc. Co., 20 N. J. Eq. (5 C. E. Green) 201.....	890, 891
Cleveland v. McCravy, 46 S. C. 252, 24 S. E. 175.....	321
Cleveland v. People's Nat. Bank (Tex. Civ. App.), 49 S. W. 523.....	1444
Cleveland, C. & S. Ry. Co. v. Knickerbocker Trust Co., 86 Fed. 73.....	414, 416, 420, 421
Cleveland, C. C. & I. R. Co. v. Jewett, 37 Ohio St. 649.....	249, 262
Cleveland, C. C. & St. L. R. Co. v. Backus, 133 Ind. 513, 33 N. E. 421, 18 L. R. A. 729.....	687
Cleveland, C. C. & St. L. R. Co. v. Town of Waynetown, 153 Ind. 550, 55 N. E. 451.....	686
Cleveland City Ry. Co. v. Cleveland, 94 Fed. 385.....	636
Cleveland Rolling Mill Co. v. Joliet Enterprise Co., 53 Fed. 683.....	1427
Clifford v. Turrell, 1 Younge & C. Ch. 138.....	1267
Clifton v. Town of Weston, 54 W. Va. 250, 46 S. E. 360.....	914
Clifton Iron Co. v. Dye, 87 Ala. 468, 6 South. 192.....	908, 922
Clinan v. Cooke, 1 Schoales & L. 22.....	1348, 1354, 1355
Cline v. Libby, 46 Wis. 123, 32 Am. Rep. 700, 49 N. W. 832.....	571
Cline v. Stock (Neb.), 98 N. W. 454.....	970
Clinkscales v. Pendleton Mfg. Co., 9 S. C. 318.....	294
Clinton v. Shuster, 82 Ill. 137.....	1520
Close v. Flesher, 8 Misc. Rep. 299, 23 N. Y. Supp. 737.....	526
Clotworthy v. Schepp, 42 Fed. 62.....	1000
Clouston v. Shearer, 99 Mass. 209.....	1227, 1232
Clowes v. Staffordshire Potteries Co., L. R. 8 Ch. App. 125.....	876, 906, 912, 965

Clyde v. Richmond etc. R. R. Co., 56 Fed. 539	453
Coale v. Barney, 1 Gill & J. 341.....	1183, 1257
Coalter v. Hunter, 4 Rand. (Va.) 58, 15 Am. Dec. 726.....	849
Coast Co. v. Mayor etc. Spring Lake, 56 N. J. Eq. 615, 51 L. R. A. 657, 36 Atl. 21.....	633, 852, 923
Coast Line R. R. v. Cohen, 50 Ga. 451	932
Coates v. Roberts, 4 Rawle (Pa.), 100	65
Coates v. Wilkes, 92 N. C. 376.....	193, 195
Coats v. Holbrook, 2 Sandf. Ch. 583.....	990
Coats v. Merrick Thread Co., 149 U. S. 562, 13 Sup. Ct. 966, 37 L. ed. 847.....	991, 995
Coatsworth v. Lehigh Val. R. Co., 156 N. Y. 451, 51 N. E. 301..	771
Cobb v. Clough, 83 Fed. 604.....	583
Cobb v. Haynes, 8 B. Mon. (Ky.) 137.....	1477
Cobb v. Illinois & St. L. R. & C. Co., 68 Ill. 233.....	764
Cobb v. Mass. Chem. Co., 179 Mass. 423, 60 N. E. 790.....	831, 855
Cobb v. Sweet, 46 App. Div. 375, 61 N. Y. Supp. 545.....	345
Cobban v. Hinds, 23 Mont. 338, 59 Pac. 1.....	714
Cobban v. Hecklen, 27 Mont. 245, 70 Pac. 805.....	1351
Coble v. Clapp, 1 Jones Eq. 173.....	1203
Cochise Co. v. Copper Queen Consol. Min. Co. (Ariz.), 71 Pac. 946	665
Cochran v. Cochran, 62 Neb. 450, 87 N. W. 152.....	1419
Cochran v. McCleary, 22 Iowa, 75.....	590
Cochrane, Ex parte, L. R. 20 Eq. 282.....	302
Cochrane v. O'Brien, 2 Jones & L. 380, 8 Ir. Eq. Rep. 241.....	86
Cocke v. Copenhaver, 126 Fed. 145.....	1123
Cockrane v. Chambers, cited in note to Amb. 79.....	1415
Cockrill v. Abeles, 86 Fed. 505, 30 C. C. A. 223.....	360
Codde v. Mahiat, 109 Mich. 186, 66 N. W. 1093.....	1125
Coddington v. Bispham, 36 N. J. Eq. 574.....	1450
Coddington v. Tappan, 26 N. J. Eq. 141.....	150
Codman v. Tinkham, 15 Pick. 364.....	1215
Codrington v. Parker, 16 Ves. 469.....	182
Coe v. Winnipisiogee etc. Co., 37 N. H. 254.....	919, 920
Coeur d'Alene C. & M. Co. v. Miners' Union, 51 Fed. 260, 19 L. R. A. 382.....	793, 1022, 1037, 1038, 1056
Coeur d'Alene R. & N. Co. v. Spalding, 93 Fed. 280, 35 C. C. A. 295.....	1079
Cofer v. Echerson, 6 Iowa, 502.....	154, 155
Coffee v. Ruffin, 4 Cold. (Tenn.) 487.....	1163
Coffeen v. Brunton, 4 McLean, 516, Fed. Cas. No. 2946.....	991
Coffeen v. Brunton, 5 McLean, 256, Fed. Cas. No. 2947.....	991
Coffeen v. Chicago, M. & St. P. Ry. Co., 84 Fed. 46, 28 C. C. A. 274	774
Coffin v. Board of Commissioners, 114 Fed. 518.....	1500
Coffin v. Coffin, Jacob, 70.....	805, 806, 813
Coffin v. Cooper, 14 Ves. 205.....	1329
Coffin v. Loper, 25 N. J. Eq. 443.....	1209
Coffin v. Ransdell, 110 Ind. 417, 11 N. E. 20.....	353, 1465
Coffman v. Sangston, 21 Gratt. 263.....	1516
Cogent v. Gibson, 33 Beav. 557.....	1262, 1263, 1267, 1268
Coggeshall v. Des Moines, 78 Iowa, 235, 41 N. W. 617; rehearing denied, 42 N. W. 650.....	692
Cogswell v. Armstrong, 77 Ill. 139.....	65, 82
Equitable Remedies, Vol. II—100	

Cohen, <i>Ex parte</i> , 5 Cal. 494.....	299, 300
Cohen v. Commissioners of Goldsboro, 77 N. C. 2.....	634
Cohen v. Delavina, 104 Fed. 946.....	484
Cohen v. Dubose, 1 Harp. Eq. 102, 14 Am. Dec. 709.....	1110
Cohen v. Ellis, 16 Abb. N. C. 320.....	1163
Cohen v. Gold Creek etc. Co., 95 Fed. 580.....	312
Cohen v. Meyers, 42 Ga. 46.....	200
Cohen v. Morris, 70 Ga. 313.....	163, 200, 487
Cohen v. Sharp, 44 Cal. 29.....	1226, 1235
Cohen v. United Garment Workers (1902), 35 Misc. Rep. 748, 72 N. Y. Supp. 341.....	1029
Cohen v. Wilkinson, 1 Macn. & G. 481.....	542
Cohill v. Cohill, 62 N. J. Eq. 157, 49 Atl. 809.....	1191
Cohnen v. Sweeney, 105 Mich. 643, 63 N. W. 641.....	308
Coit v. North Carolina Amalgamating Co., 119 U. S. 347, 7 Sup. Ct. 231, 30 L. ed. 420.....	1458
Coker v. Birge, 9 Ga. 425, 54 Am. Dec. 347.....	918
Coker v. Birge, 10 Ga. 336.....	918
Coker v. Pitts, 37 Ala. 693.....	1204
Colby v. Colby, 59 Minn. 432, 50 Am. St. Rep. 420, 61 N. W. 460	1097, 1105
Colby v. La Grange, 65 Fed. 554.....	769
Colby v. Spokane, 12 Wash. 690, 42 Pac. 112.....	766
Cole v. Boyd (Neb.), 93 N. W. 1003.....	54
Cole v. Creyon, 1 Hill Eq. 311, 26 Am. Dec. 208.....	1194
Cole v. Cunningham, 133 U. S. 107, 10 Sup. Ct. 269, 33 L. ed. 538	32, 445, 447, 450, 1126
Cole v. Edwards, 93 Iowa, 477, 61 N. W. 940.....	524
Cole v. Fickett, 95 Me. 265, 49 Atl. 1066.....	1146
Cole v. Grigsby (Tex. Civ. App.), 35 S. W. 680.....	57
Cole v. Malcolm, 66 N. Y. 363.....	1498
Cole v. Marple, 98 Ill. 58, 38 Am. Rep. 83.....	1447
Cole v. Millerton I. Co., 133 N. Y. 164, 28 Am. St. Rep. 615, 30 N. E. 847.....	1460
Cole v. Oil-Well Supply Co., 57 Fed. 534.....	318
Cole v. Price, 22 Wash. 18, 60 Pac. 153.....	145, 146, 263, 269
Cole v. Reynolds, 18 N. Y. 74.....	1525
Cole v. Satsop R. R. Co., 9 Wash. 487, 43 Am. St. Rep. 858, 37 Pac. 700.....	373
Cole v. Young, 24 Kan. 435.....	1127
Cole v. White, 1 Bro. C. C. 409.....	1350
Coleman, <i>In re</i> , 174 N. Y. 373, 66 N. E. 983.....	401
Coleman v. Chambers, 127 Ala. 615, 29 South. 58.....	77, 86, 99, 101
Coleman v. Coleman, 19 Pa. (7 Harris) 100, 57 Am. Dec. 641...	1180, 1193
Coleman v. Glenn, 103 Ga. 458, 68 Am. St. Rep. 108, 30 S. E. 297	584, 591
Coleman v. Howe, 154 Ill. 458, 45 Am. St. Rep. 133, 39 N. E. 725.....	1466
Coleman v. McGrew (Neb.), 99 N. W. 663.....	487
Coleman v. Roff, 16 Vroom, 17, 45 N. J. L. 7.....	298
Coles v. Coles, 15 Johns. 159, 8 Am. Dec. 231.....	1192, 1197
Coles v. Feeney, 52 N. J. Eq. 493, 495, 29 Atl. 172.....	1380
Coles v. Sims, 5 De Gex, M. & G. 1.....	510
Coles v. Trecothick, 9 Ves. 246.....	1312, 1313, 1392
Cole Silver Min. Co. v. Virginia etc. Water Co., 1 Saw. 470, Fed. Cas. No. 2989; 1 Saw. 685, Fed. Cas. No. 2990.....	971, 1069

Colgate v. International Ocean Tel. Co. , 17 Blatchf. 308, Fed. Cas. No. 2993.....	973
Collamer v. Hutchins , 27 Vt. 734.....	1195
Collard v. Marshall , [1892] 1 Ch. 571.....	1058
Collier v. Brown , 1 Cox, 428.....	1312
Collier v. Sapp , 49 Ga. 93.....	157
Colliery Engineer Co. v. Ewald , 126 Fed. 843.....	985
Collins v. Barker , [1893] 1 Ch. 578.....	148
Collins v. Buffalo etc. Co. , 73 App. Div. 22, 76 N. Y. Supp. 420.....	945, 952, 957
Collins v. Castle , L. R. 36 Ch. D. 243.....	503
Collins v. Green , 10 Okla. 244, 62 Pac. 813.....	733
Collins v. Keokuk , 118 Iowa, 30, 91 N. W. 791.....	692
Collins v. Myers , 68 Ga. 530.....	202
Collins v. Richart , 14 Bush (Ky.), 621.....	197
Collins v. Sutton , 94 Va. 127, 26 S. E. 415.....	836
Collins Co. v. Brown , 3 Kay & J. 423.....	990, 1173
Collins Co. v. Cowen , 3 Kay & J. 428.....	990
Colls v. Home etc. Stores , [1904] App. Cas. 179, 193, 212, reversing [1902] 1 Ch. Div. 302.....	935, 944, 962
Collum v. Emanuel , 1 Ala. 33, 34 Am. Dec. 757.....	1502, 1506
Colman v. Eastern Counties Ry. , 10 Beav. 1.....	542
Colonial etc. Co. v. Hutchinson etc. Co. , 44 Fed. 219.....	1519, 1523
Colorado Fuel etc. Co. v. Rio Grande S. Ry. Co. , 8 Colo. App. 493, 46 Pac. 845.....	336
Colorado T. & I. Co. v. Sedalia Smelting Co. , 13 Colo. App. 474, 59 Pac. 222.....	1471
Colson v. Leitch , 110 Ill. 504.....	1120
Colton v. Bigelow , 41 N. J. L. 266.....	195
Colton v. Bigelow , 47 N. J. L. 428, 1 Atl. 502.....	195
Colton v. Dacy , 61 Fed. 481.....	1499
Colton v. Depew , 60 N. J. Eq. 454, 83 Am. St. Rep. 650, 46 Atl. 728.....	36
Colton v. Drovers' Perpetual Bldg. & Loan Assn. of Baltimore , 90 Md. 85, 78 Am. St. Rep. 431, 45 Atl. 23, 46 L. R. A. 388.....	370
Colton v. Hanchett , 13 Ill. 615.....	601, 609
Colton v. Price , 50 Ala. 424.....	593
Colton v. Smith , 11 Pick. 311, 22 Am. Dec. 375.....	1195, 1205
Coltrane v. Templeton , 106 Fed. 370, 45 C. C. A. 328.....	452
Columbia Ave. etc. Co. v. Dawson , 130 Fed. 152.....	528
Columbia Ave. etc. Co. v. Prison Commission of Ga. , 92 Fed. 801.....	888
Columbia Finance etc. Co. v. Morgan , 19 Ky. Law Rep. 1761, 44 S. W. 389, 45 S. W. 65.....	197
Columbian Athletic Club v. State , 143 Ind. 98, 52 Am. St. Rep. 407, 40 N. E. 914, 28 L. R. A. 727.....	205, 797, 896
Columbian Book Co. v. De Golyer , 115 Mass. 67.....	307
Columbian Ins. Co. v. Lawrence , 2 Pet. 25, 46, 7 L. ed 335.....	1359
Columbus & W. Ry. Co. v. Witherow , 82 Ala. 190, 3 South. 23.....	772
Colusa Parrot Min. & S. Co. v. Barnard , 28 Mont. 11, 72 Pac. 45.....	483
Colvin's Estate , In re, 3 Md. Ch. 278.....	140
Colwell v. St. Pancras etc. Council , [1904] L. R. 1 Ch. 707.....	870
Combes v. Keyes , 89 Wis. 297, 46 Am. St. Rep. 839, 62 N. W. 89, 27 L. R. A. 369.....	381
Combes v. Scott , 76 Wis. 662, 45 N. W. 532.....	1336, 1371
Combs v. Hamlin Wizard Oil Co. , 58 Ill. App. 123.....	1120
Combs v. Sewell , 22 Ky. Law Rep. 1026, 59 S. W. 526.....	1118

Comer v. Bray, 83 Ala. 217, 3 South. 554.....	394
Comer v. Shehee, 129 Ala. 588, 87 Am. St. Rep. 78, 30 South. 95.....	1209
Commercial Bank, In re. 35 App. Div. 224, 54 N. Y. Supp. 722....	330
Commercial Ins. Co. v. McLoon 14 Allen, 351.....	1154
Commercial Nat. Bank v. Burch, 141 Ill. 519, 33 Am. St. Rep. 331, 31 N. E. 420.....	360
Commercial Nat. Bank v. Motherwell Iron & Steel Co., 95 Tenn. 172, 31 S. W. 1002, 29 L. R. A. 164.....	440
Commissioners v. Blackett, [1848] 12 Jur. 151.....	838
Commissioners v. Durham, 43 Ill. 86.....	764
Commissioners v. Hoag, 48 Kan. 413, 29 Pac. 758.....	697
Commissioners v. Old Dominion Steamship Co., 98 N. C. 163, 3 S. E. 505.....	1107
Commissioners' Court of Perry County v. Medical Society of Perry County, 128 Ala. 257, 29 South. 586.....	613
Commissioners of Chatham Co. v. Thorne, 117 N. C. 211, 23 S. N. E. 184.....	586
Commissioners of Barber Co. v. Smith, 48 Kan. 331, 29 Pac. 565.....	580
Commissioners of Putnam Co. v. Krauss, 52 Ohio St. 628, 42 ... E. 831.....	729
Commonwealth v. Franklin Ins. Co., 115 Mass. 278.....	392
Commonwealth v. Hide & Leather Ins. Co., 119 Mass. 155.....	308
Commonwealth v. Hunt, 4 Met. (Mass.) 111, 38 Am. Dec. 346....	1019
Commonwealth v. Order of Vesta, 156 Pa. St. 531, 27 Atl. 14....	245
Commonwealth v. Pittsburgh & C. R. Co., 24 Pa. St. 159, 62 Am. Dec. 342.....	764
Commonwealth v. Reading Traction Co., 204 Pa. St. 151, 53 Atl. 755.....	44
Commonwealth v. Smith, 10 Allen, 448, 87 Dec. 672.....	1227, 1228
Compton v. Matthews, 3 La. 128, 22 Am. Dec. 167.....	1202
Compton v. Patterson, 28 S. C. 152, 5 S. E. 470.....	1436
Compton v. Schwabacher Bros. & Co., 15 Wash. 306, 46 Pac. 338	354, 364, 1459
Comstock v. Coon, 135 Ind. 642, 35 N. E. 909.....	1144
Comstock v. Hitt, 37 Ill. 542.....	1384
Comstock v. McDonald, 113 Mich. 626, 71 N. W. 1087.....	148
Conant v. Smith, 1 Aik. (Vt.) 67, 15 Am. Dec. 669.....	1189
Condit v. Bigalow, 64 N. J. Eq. 504, 54 Atl. 160.....	37
Cone v. Combs, 18 Fed. 570, 5 McCrary, 651.....	177
Coney, In re, L. R. 29 Ch. Div. 993.....	119, 161
Coney v. Brunswick etc. Co., 116 Ga. 222, 42 S. E. 498.....	830
Congdon v. Lee, 3 Edw. Ch. 304.....	189
Conger v. New York etc. R. Co., 120 N. Y. 29, 23 N. E. 983....	1280, 1316, 1317
Congregation Shaarai Tephila v. May etc., 53 How. Pr. 213....	1228
Congress etc. Spring Co. v. High Rock etc. Co., 45 N. Y. 291, 6 Am. Rep. 82.....	990
Conkey Co. v. Russel, 111 Fed. 417, 424.....	1043
Conklin v. Conklin, 3 Sandf. Ch. 64.....	1211
Conklin v. Hinds, 16 Minn. (Gil. 411) 457.....	1246
Conklin v. People's Bldg. & Loan Assn., 41 N. J. Eq. 20, 2 Atl. 615.....	1270
Conley v. Alabama Gold Life Ins. Co., 67 Ala. 472.....	86
Conley v. Chedie, 6 Nev. 223.....	719
Conley v. Deere, 11 Lea (Tenn.), 274, 279.....	292
Connah v. Sedgwick, 1 Barb. 210.....	162, 163, 189

Connecticut Ins. Co. v. Bear, 26 Fed. 582.....	1154, 1155
Connecticut Ins. Co. v. Home Ins. Co., 17 Blatchf. 142, Fed. Cas. No. 3107.....	1154
Connecticut Mut. Ins. Co. v. Lea, 7 Ohio N. P. 399, 10 Ohio S. & C. P. Dec. 39.....	95
Connecticut Mut. Life Ins. Co. v. New York etc. Ry. Co., 25 Conn. 265, 65 Am. Dec. 571.....	1496
Connecticut Mut. L. Ins. Co. v. Smith, 117 Mo. 261, 297, 38 Am. St. Rep. 656, 670, 22 S. W. 623.....	1233
Connecticut Mut. L. Ins. Co. v. Tucker, 23 R. I. 1, 91 Am. St. Rep. 590, 49 Atl. 26.....	85
Connecticut River Banking Co. v. Rockbridge Co., 73 Fed. 709.....	294, 295
Connell v. Reed, 128 Mass. 477, 35 Am. St. Rep. 397.....	468, 1000
Connolly v. Dickson, 76 Ind. 440.....	180, 259
Connolly v. Haggarty, 65 N. J. Eq. 596, 56 Atl. 371.....	1338
Conner v. Cox, 15 Ky. Law Rep. 140, 22 S. W. 605.....	1216
Conner v. Howe, 35 Minn. 518, 29 N. W. 314.....	1494
Conner v. Leach, 84 Md. 571, 36 Atl. 591.....	58
Conner v. Long, 104 U. S. 229, 26 L. ed. 723.....	327
Connors, Appeal of, 103 Pa. St. 356.....	737
Connole v. Boston etc. Co., 20 Mont. 523, 52 Pac. 263.....	818
Connolly v. Dolan, 22 R. I. 60, 84 Am. St. Rep. 816, 46 Atl. 36.....	1489
Connolly v. Van Wyck, 35 Misc. Rep. 746, 72 N. Y. Supp. 382.....	483
Conover v. Earl, 26 Iowa. 167.....	1183, 1185
Conover v. Hill, 76 Ill. 342.....	1487
Consociated Pres. Soc. v. Staples, 23 Conn. 544.....	82, 96
Consolidated Coal Co. v. Schmisser, 135 Ill. 371, 25 N. E. 795.....	514
Consolidated Fastener Co. v. Columbian Fastener Co., 73 Fed. 828.....	984
Consolidated Min. & P. Co. v. Huff, 62 Kan. 405, 63 Pac. 442.....	1396
Consolidated Rubber Tire Co. v. Finley Rubber Tire Co., 106 Fed. 175.....	984
Consolidated Safety-Valve Co. v. Crosby Steam Gauge and Valve Co., 113 U. S. 157, 5 Sup. Ct. 513, 28 L. ed. 939.....	978
Consolidated Steel and Wire Co. v. Murray et al., 80 Fed. 811.....	793, 1042
Consolidated Tank Line Co. v. Consolidated Varnish Co., 43 Fed. 204.....	206
Const v. Harris, Turn. & R. 517.....	143, 145
Construction Co. v. Schack, 40 N. J. Eq. 222, 226, 1 Atl. 23.....	243
Conter v. Herschel, 24 Nev. 152, 50 Pac. 851.....	1194
Continental Ins. Co. v. Board of Fire Underwriters, 67 Fed. 310.....	1051
Continental Nat. Bank v. Heilman, 81 Fed. 36.....	47
Continental Nat. Bank v. Heilman, 86 Fed. 514, 30 C. C. A. 232.....	36, 47
Continental Nat. B. & L. Assn. v. Miller, 44 Fla. 757, 33 South. 404.....	215, 216
Continental Trust Co. v. Toledo etc. R. Co., 59 Fed. 514.....	387, 394, 395
Continental Trust Co. v. Toledo etc. R. Co., 82 Fed. 642.....	1424
Contracting & Building Co. v. Continental Trust Co., 108 Fed. 1, 47 C. C. A. 143.....	422
Converse v. Brown, 200 Ill. 166, 65 N. E. 644.....	44
Converse v. Hood, 19 Mass. 471, 21 N. E. 878, 4 L. R. A. 521.....	548
Conyers v. Mericles, 75 Ind. 443.....	1208
Cook, Ex parte, 2 P. Wms. 500.....	1536

Cook v. Allen, 2 Mass. 467.....	1208
Cook v. Andrews, [1897] 1 Ch. 266.....	203
Cook v. Clayworth, 18 Ves. 12, 15.....	1311
Cook v. Cole, 55 Iowa, 72, 7 N. W. 419.....	296
Cook v. Condon, 6 Kan. App. 574, 51 Pac. 587.....	696
Cook v. Detroit etc. R. Co., 45 Mich. 453, 8 N. W. 74.....	272, 275
Cook v. Earl of Rosslyn, 1 Giff. 167.....	88, 90
Cook v. East Trenton Pottery Co., 53 N. J. Eq. 29, 30 Atl. 534..	243
Cook v. Galveston H. & S. A. R. Co., 5 Tex. Civ. App. 644, 24 S. W. 544.....	740
Cook v. Lake, 50 App. Div. 92, 63 N. Y. Supp. 818.....	1443
Cook v. Lasher, 73 Fed. 701, 19 C. C. A. 654, 42 U. S. App. 42..	59
Cook v. Martin (Ark.), 87 S. W. 625.....	280, 406
Cook v. Racine, 49 Wis. 243, 5 N. W. 352.....	758
Cook v. Texas & P. Ry. Co., 3 Tex. Civ. App. 145, 22 S. W. 58..	1133
Cook v. Webb, 19 Minn. 167.....	1187, 1194
Cooke v. Barrett, 155 Mass. 413, 29 N. E. 625.....	41
Cooke v. Boynton, 135 Pa. St. 102, 19 Atl. 944.....	1069
Cooke v. Forbes, L. R. 5 Eq. 166.....	864
Cooke v. Gwyn, 3 Atk. 690.....	177
Cooke v. Miller (R. I.), 54 Atl. 927.....	1275
Cookes v. Mascall, 2 Vern. 200.....	1362
Cooley v. Barker, 122 Iowa, 440, 101 Am. St. Rep. 276, 98 N. W. 289.....	1121
Cooley v. Lobdell, 153 N. Y. 596, 47 N. E. 783.....	1348
Cooley v. Scarlett, 38 Ill. 316, 87 Am. Dec. 298.....	31
Coon v. Cronk, 131 Ind. 44, 30 N. E. 882.....	1193
Cooper, In re, 20 Ch. D. 611.....	1152
Cooper v. Adel Security Co., 127 N. C. 219, 37 S. E. 216.....	1469
Cooper v. Berney Nat. Bank, 99 Ala. 119, 11 South. 760.....	186
Cooper v. Bowers, 42 Barb. 87, 28 How Pr. 10.....	362, 366
Cooper v. Carlisle, 17 N. J. Eq. 529.....	1359
Cooper v. Cedar Rapids Water-Power Co., 42 Iowa, 398.....	1188
Cooper v. Crabtree, L. R. 20 Ch. D. 589.....	830, 923
Cooper v. De Tastet, Tam, 177.....	77, 87
Cooper v. Duncan, 58 Mo. App. 5.....	1075
Cooper v. Gordan, L. R. 8 Eq. 249.....	564
Cooper v. Gum, 152 Ill. 471, 39 N. E. 267.....	1158
Cooper v. Jenkins, 32 Beav. 337.....	1507
Cooper v. Joel, 1 De Gex, F. & J. 240.....	1154
Cooper v. Leather Mfg. Nat. Bank, 29 Fed. 161.....	277
Cooper v. Newton, 68 Ark. 150, 56 S. W. 867.....	1348
Cooper v. Thomason, 30 Or. 161, 45 Pac. 296.....	1351, 1352, 1354
Cooper v. Whaley, 90 Ga. 285, 15 S. E. 824.....	1136
Cooper v. Williams, 4 Ohio (4 Ham.) 253, 22 Am. Dec. 745.....	585
Coosaw Min. Co. v. South Carolina, 144 U. S. 564, 12 Sup. Ct. 689, 36 L. ed. 537.....	930
Copeutt v. City of Yonkers, 83 Hun, 178, 31 N. Y. Supp. 659....	723
Cope v. District Fair Assn., 99 Ill. 489, 39 Am. Rep. 30.....	549, 792
Cope v. Evans, L. R. 18 Eq. 138.....	991
Copeland v. Huntington, 99 Mass. 525.....	468
Coppage v. Griffith, 16 Ky. Law Rep. 459, 40 S. W. 908.....	848
Copper King v. Wabash Min. Co., 114 Fed. 991.....	919
Coquard v. Indian Grave Drainage Dist., 69 Fed. 867, 16 C. C. A. 530, 34 U. S. App. 169.....	577
Coquard v. Oil Co., 171 Ill. 189, 49 N. E. 563.....	549

Coquillard v. Suydam, 8 Blackf. 24.....	1520
Corbett v. Jonas, [1892] L. R. 3 Ch. D. 137.....	946
Corbett v. Nutt, 10 Wall. 464, 19 L. ed. 976.....	25
Corbin v. Berry, 83 N. C. 27.....	262, 273
Corbin v. Casina Land Co., 26 App. Div. 408, 49 N. Y. Supp. 929.....	1082
Corbin v. Thompson, 141 Ind. 128, 40 N. E. 533.....	113, 157, 259
Corbin v. Tracy, 34 Conn. 325.....	1267, 1268
Corbitt v. Timmerman, 95 Mich. 581, 35 Am. St. Rep. 586, 55 N. W. 437.....	1117
Corbus v. Teed, 69 Ill. 205.....	1332, 1382, 1384
Corbus v. Treadwell Gold Min. Co., 99 Fed. 334.....	547
Corcoran v. Chicago, M. & N. R. Co., 149 Ill. 291, 37 N. E. 68.....	774
Corder v. Steiner (Tex. Civ. App.), 54 S. W. 277.....	1135
Core v. Wigner, 32 W. Va. 277, 9 S. E. 36.....	1296
Corey v. Long, 12 Abb. Pr., N. S., 427.....	105, 154
Corey v. Schuster, 44 Neb. 269, 62 N. W. 470.....	1227
Corev v. Wadsworth, 118 Ala. 488, 25 South. 503, 44 L. R. A. 766; S. C., 99 Ala. 68, 42 Am. St. Rep. 29, 11 South. 350, 23 L. R. A. 618.....	1458
Corinth v. Locke, 62 Vt. 411, 20 Atl. 809, 11 L. R. A. 207.....	1227
Corliss v. E. W. Walker Co., 57 Fed. 434, 64 Fed. 280.....	1059
Cornell v. Andrews, 35 N. J. Eq. 7.....	1321
Cornell v. Radway, 22 Wis. 260.....	1434
Cornell v. Redrow, 60 N. J. Eq. 251, 47 Atl. 56.....	1530
Cornell v. Savage, 63 N. Y. Supp. 540, 49 App. Div. 429.....	1424
Corning v. Troy etc. Factory, 40 N. Y. 191, 39 Barb. 311, 34 Barb. 485, 6 How. Pr. 89.....	873, 883, 906, 914, 969, 1069
Corning v. White, 2 Paige, 567, 22 Am. Dec. 659.....	1447, 1449, 1452
Cornish v. Frees, 74 Wis. 490, 43 N. W. 507.....	1236
Cornish v. Gest, 2 Cox, 27.....	1202
Cornish v. Wiessman, 56 N. J. Eq. 610, 35 Atl. 408.....	502, 511
Cornwall v. Henson, [1900] 2 Ch. 298.....	1341
Cornwell, Appeal of, 7 Watts. & S. (Pa.) 305.....	1507
Corrothers v. Board of Education, 16 W. Va. 527.....	647, 748
Corson v. Shoemaker, 55 Minn. 386, 57 N. W. 134.....	28
Cort v. Lassard, 18 Or. 221, 17 Am. St. Rep. 726, 22 Pac. 1054, 6 L. R. A. 653.....	497, 520, 521
Cortleyeu v. Hatheway, 11 N. J. Eq. 39, 64 Am. Dec. 478.....	
.....	111, 118, 171, 172, 183
Cosby v. Honaker (W. Va.), 50 S. E. 610.....	1333
Cosgriff v. Hudson City Sav. Inst., 24 Misc. Rep. 4, 52 N. Y. Supp. 189.....	68
Coslake v. Till, 1 Russ. 376.....	1274
Cosmos Exploration Co. v. Grav Eagle Oil Co., 104 Fed. 20.....	484
Costello v. Friedman (Ariz.), 71 Pac. 935.....	1332
Coster v. Parkersburg Branch R. Co., 131 Fed. 115.....	388
Cotes v. Bennett, 84 Ill. App. 33.....	1427
Cotter v. Bank of England, 2 Dowl. Pr. 728.....	82
Cotter v. Layer, 2 P. Wms. 622.....	1380
Cotting v. Kansas City Stockyards Co., 79 Fed. 679.....	586
Cotting v. Kansas City Stock Yards Co., 82 Fed. 850.....	575
Cottle v. Leitch, 35 Cal. 434.....	1526
Cottrell v. Watkins, 89 Va. 801, 37 Am. St. Rep. 897, 17 S. E. 328, 19 L. R. A. 754.....	1162
Cotulla v. American Freehold L. M. Co. (Tex. Civ. App.), 86 S. W. 339, 631.....	197

Coughlin v. Barker, 46 Mo. App. 54.....	504
Coughran v. Bigelow, 164 U. S. 301, 310, 17 Sup. Ct. 117, 41 L. ed. 473.....	1343
Coughran v. Swift, 18 Ill. 414.....	1133
Coulson v. Harris, 43 Miss. 728.....	709
Coulson v. Saltsman (Neb.), 98 N. W. 1055.....	1430
Coulter v. Louisville & N. R. Co., 196 U. S. 599, 25 Sup. Ct. 342, 49 L. ed.....	659
Coulter v. Weir, 62 C. C. A. 429, 127 Fed. 897.....	646
Council Bluffs v. Stewart, 51 Iowa, 385, 1 N. W. 628.....	624
Counter v. Macpherson, 5 Moore P. C. C. 83.....	1390
Count Rane'agh v. Hayes, 1 Vern. 189.....	1270
County Commissioners of Allegany Co. v. Union M. Co., 61 Md. 545.....	702
County etc. Bank v. Colliery Co., [1895] 1 Ch. 629.....	166
Couper v. Shirley, 75 Fed. 168, 21 C. C. A. 288.....	176
Couper v. Smyth, 84 Fed. 757.....	594, 595
Courcier v. Graham, 2 Ohio, 341.....	1364
Court v. O'Connor, 65 Tex. 339.....	740, 741
Courthope v. Mapplesden, 10 Ves. 290.....	826
Covell v. Chadwick, 153 Mass. 263, 25 Am. St. Rep. 625, 26 N. E. 237.....	1056
Covell v. Heyman, 111 U. S. 176, 4 Sup. Ct. 355, 28 L. ed. 390....	328
Covert v. Bray, 26 Ind. App. 671, 60 N. E. 709.....	1134
Covert v. Rogers, 38 Mich. 368.....	283
Covey v. Neff, 63 Ind. 391.....	1478
Coville v. Gilman, 13 W. Va. 314.....	1087
Covington v. Chamblin, 156 Mo. 574, 57 S. W. 728.....	1092
Covington v. Limerick, 19 Ky. Law Rep. 330, 40 S. W. 254.....	1518
Covington City Nat. Bank v. Commercial Bank, 65 Fed. 547....	1398
Covington Drawbridge Co. v. Shepherd, 21 How. 112, 16 L. ed 38.....	228, 259
Cowan v. Fairbrother, 118 N. C. 406, 54 Am. St. Rep. 733, 24 S. E. 212, 32 L. R. A. 829.....	524, 525
Cowan v. Kane, 211 Ill. 572, 71 N. E. 1097.....	1366, 1368
Cowan v. Sapp, 81 Ala. 525, 8 South. 212.....	1307
Cowan v. Southern Ry. Co., 118 Ala. 554, 23 South. 754.....	789
Cowdrey v. Railroad Co., 1 Woods, 336, Fed. Cas. No. 3293.....	387, 388, 398
Cowles v. Garrett's Admrs., 30 Ala. 341.....	1185
Cowtan v. Williams, 9 Ves. 108.....	90, 97
Coykendall v. Hood, 36 App. Div. 558, 55 N. Y. Supp. 718.....	634
Cox v. Bank of Hartsville, (Tenn. Ch. App.), 63 S. W. 237.....	1102
Cox v. Clift, 2 N. Y. 118.....	1226, 1235
Cox v. Hawkins, 199 Ill. 68, 64 N. E. 1093.....	679
Cox v. McMullin, 14 Gratt. 82.....	1210
Cox v. Moores, 55 Neb. 34, 75 N. W. 35.....	596
Cox v. O'Neal (Ala.), 37 South. 674.....	1075
Cox v. Peters, 13 N. J. Eq. 39.....	144
Cox v. Volkert, 86 Mo. 505, 511.....	141, 360, 366
Coxe v. Salomon, 188 Ill. 571, 59 N. E. 422.....	676, 682
Coxe v. Smith, 4 Johns. Ch. 276.....	1198
Coyne v. Sayre, 54 N. J. Eq. 702, 36 Atl. 96.....	1440
Cozart v. Fleming, 123 N. C. 547, 31 S. E. 822.....	594
Crabtree v. Levings, 53 Ill. 526.....	1331
Craft v. Indianapolis, D. & W. Ry. Co., 166 Ill. 580, 46 N. E. 1132	30

Craft v. Jackson County , 5 Kan. 518.....	614
Crafts v. Dexter , 8 Ala. 767, 42 Am. Dec. 666.....	1113
Crafts v. Mott , 4 N. Y. 604.....	1485
Cragg v. Holme , 18 Ves. 14, note (12).....	1311
Craig v. Hoge , 95 Va. 275, 28 S. E. 317.....	1446, 1449
Craig v. Kittredge , 23 N. H. 231.....	1149
Craig v. McKinney , 72 Ill. 305.....	1516
Craig v. Rochester etc. R. R. Co. , 39 N. Y. 404.....	771, 772
Craighead v. Pike , 58 N. J. Eq. 15, 43 Atl. 424.....	1189
Craighill v. Lambert , 168 U. S. 611, 18 Sup. Ct. 217, 42 L. ed. 599. 664	
Cramer v. Bird , L. R. 6 Eq. 143.....	211
Crampton v. Zabriskie , 101 U. S. 601, 25 L. ed. 1070. 601, 602, 609, 624	
Cramwell v. Clinton Realty Co. (N. J. Ch.) , 58 Atl. 1030.....	1333
Crandall v. Lincoln , 52 Conn. 73, 52 Am. Rep. 560.....	374
Crandall v. Willig , 166 Ill. 233, 46 N. E. 755.....	1297
Crane v. Bunnell , 10 Paige, 333.....	1088
Crane v. Burntrager , 1 Ind. 165.....	88, 90
Crane v. Davis (Miss.) , 21 South. 17.....	826
Crane v. Gough , 4 Md. 316.....	1257
Crane v. Janesville , 20 Wis. 305.....	755
Crane v. McCoy , 1 Bond, 422, Fed. Cas. No. 3354.....	107, 111
Crane v. McDonald , 118 N. Y. 648, 654, 23 N. E. 991.....	
..... 65, 68, 69, 78, 92, 94, 95	
Crane v. Morrison , 4 Saw. 138, Fed. Cas. No. 3355.....	1535
Crane v. Randolph , 30 Ark. 579.....	1226, 1228, 1232
Crane v. Siloam Springs , 67 Ark. 30, 55 S. W. 955.....	667
Cranford v. Tyrrel , 128 N. Y. 341, 28 N. E. 514... 794, 872, 931, 1042	
Cranmer v. McSwords , 26 W. Va. 412.....	1479
Cranmer v. Williamson , 8 Okla. 683, 59 Pac. 249.....	732
Cranstown v. Johnston , 3 Ves. 170.....	456
Crapster v. Griffith , 2 Bland, 525.....	1183, 1185
Crary v. Smith , 2 N. Y. 60, 65.....	1331
Crass v. Memphis & C. R. Co. , 96 Ala. 447, 11 South. 480.....	
..... 66, 80, 81, 96, 99	
Crauford's Admr. v. Smith's Exr. , 93 Va. 623, 23 S. E. 235, 25	
S. E. 657.....	52
Craver & S. Mfg. Co. v. Whitman etc. Mfg. Co. , 62 Ill. App. 313	
..... 261, 268	
Crawford v. Fisher , 1 Hare, 436, 441....	67, 89
Crawford v. Fisher , 10 Sim. 479.....	70
Crawford v. Lamar , 9 Colo. App. 83, 47 Pac. 665.....	1131
Crawford v. Richeson , 101 Ill. 351.....	1507
Crawford v. Rohrer , 59 Md. 599.....	1469
Crawford v. Ross , 39 Ga. 44.....	108, 114
Crawford v. Toogood , L. R. 13 Ch. D. 143, 158.....	1340
Crawshay v. Maule , 1 Swanst. 518.....	1189
Crawshay v. Thornton , 2 Mylne & C. 1... 64, 65, 77, 78, 79, 84, 88, 90	
Craythorne v. Swinburne , 14 Ves. 160.....	1482
Creamer v. Bowers , 30 Fed. 185.....	978
Creath v. Sims , 5 How. 192, 12 L. ed. 111.....	1075, 1077
Credit Co., Ltd., v. Arkansas Cent. R. Co. , 15 Fed. 46, 5 McCrary,	
23.....	405
Cree v. Sherfy , 138 Ind. 354, 37 N. E. 787.....	1159
Creely v. Bay State etc. Co. , 103 Mass. 514.....	859
Cregar v. Cramen , 31 N. J. Eq. 375.....	1100
Crellin v. Levland , 6 Jur. 733.....	89

Crenshaw v. Creek, 52 Mo. 100.....	1204
Crenshaw v. Seigfried, 24 Gratt. 272.....	569
Cresap v. Kemble, 26 W. Va. 603.....	822, 843, 1173
Crescent City Gaslight Co. v. New Orleans Gaslight Co., 27 La. Ann. 138.....	1002
Crescent City Livestock etc. Co. v. Police Jury, 32 La. Ann. 1194.....	867
Crescent Min. Co. v. Silver King Min. Co., 17 Utah, 444, 17 Am. St. Rep. 810, 54 Pac. 244.....	824, 830, 840
Crighton v. Dahmer, 70 Miss. 602, 13 South. 237, 21 L. R. A. 84.....	1084
Crim v. Handley, 94 U. S. 652, 24 L. ed. 216.....	1107, 1112
Crim v. Town of Philippi, 38 W. Va. 122, 18 S. E. 466.....	748
Crippen v. Hudson, 13 N. Y. 161.....	1427
Crippen v. X. Y. Irr. Ditch Co. (Colo.), 76 Pac. 794.....	1121
Criseoe v. Hambrick, 47 Ark. 235, 1 S. W. 150.....	1197
Crocker v. Allen, 34 S. C. 452, 27 Am. St. Rep. 831, 13 S. E. 650.....	1115, 1124
Crocker v. Carpenter, 98 Cal. 418, 33 Pac. 271.....	1244
Crocker v. Huntzicker, 113 Wis. 181, 88 N. W. 232.....	1412
Crocker v. Manhattan etc. Co., 61 App. Div. 226, 70 N. Y. Supp. 492, modifying 31 Misc. Rep. 687, 66 N. Y. Supp. 84.....	855, 856, 859, 860, 913
Crockett v. Crockett, 73 Ga. 647.....	1145
Crockford v. Alexander, 15 Ves. 138.....	1382, 1388
Crofoot v. Thatcher, 19 Utah, 212, 75 Am. St. Rep. 725, 57 Pac. 171.....	1459
Crofts v. Middleton, 8 De Gex, M. & G. 192.....	1086
Croghan v. Cooke, 2 B. & Beatty, 230, 233.....	1415
Croghan v. Livingston, 17 N. Y. 220.....	1196
Croke v. Am. Nat. Bank of Denver, 18 Colo. App. 3, 70 Pac. 229.....	941
Crombie v. Order of Solon, 157 Pa. St. 588, 27 Atl. 710.....	117
Crompton v. Lea, L. R. 19 Eq. 115, 121.....	892
Cromwell v. American L. & T. Co., 57 Hun, 149, 11 N. Y. Supp. 144.....	88
Cronin v. Bloemecke, 58 N. J. Eq. 313, 43 Atl. 605.....	879
Cronin v. Cronin, 9 Civ. Proc. Rep. (N. Y.) 137, 3 How. Pr. N. S., 184.....	101
Cronin v. Gay, 20 Tex. 460.....	1414
Crook v. Brown, 11 Md. 158.....	1230
Crooke v. Andrews, 40 N. Y. 547.....	1237
Crooker v. Crooker, 46 Me. 250.....	1536
Crookston Imp. Co. v. Marshall, 57 Minn. 333, 47 Am. St. Rep. 612, 59 N. W. 294.....	1141, 1148
Crosbie v. Tooke, 1 Mylne & K. 431.....	1383
Crosier v. McLaughlin, 1 Nev. 348.....	1201
Cross v. Armstrong, 44 Ohio St. 613, 10 N. E. 160.....	66
Cross v. Bean, 81 Me. 525, 17 Atl. 710.....	1146
Cross v. Kitts, 69 Cal. 217, 10 Pac. 409, 58 Am. Rep. 558.....	971
Cross v. Morristown, 18 N. J. Eq. 305.....	821
Cross v. Will Co. Nat. Bank, 177 Ill. 33, 52 N. E. 322.....	185
Crossley v. Lightowler, L. R. 2 Ch. App. 478.....	869, 966
Croston v. Male (W. Va.), 49 S. E. 136.....	1216
Crothers v. Lee, 29 Ala. 337.....	1519, 1520
Croton Turnpike Co. v. Ryder, 1 Johns. Ch. 611, Ames, Cas. in Eq. Jur. 611.....	1002
Crow v. Red River County Bank, 52 Tex. 362.....	186
Crowder v. Moore, 52 Ala. 220.....	261

Crowder v. Riggs, 153 Ind. 153, 53 N. E. 1019.....	686
Crowder v. Tinkler, 19 Ves. 617.....	973
Crowe v. Aiken, 4 Am. Law Rev. 450, Fed. Cas. No. 3441.....	988
Crowe v. Lewin, 95 N. Y. 423.....	1151
Crowe v. Wilson, 65 Md. 479, 57 Am. Rep. 343, 5 Atl. 427....	804, 805
Crowley v. Timberlake, 2 Ired. Eq. 460.....	804
Crumbie v. Wallsend etc. Bd., [1891] 1 Q. B. 93.....	945
Crumlish v. Central Imp. Co., 38 W. Va. 390, 45 Am. St. Rep. 872, 18 S. E. 456, 23 L. R. A. 120.....	1478, 1502
Crump v. Commonwealth (1888), 84 Va. 927, 10 Am. St. Rep. 895, 6 S. E. 620.....	1030, 1040
Crump v. Lambert, L. R. 3 Eq. 409.....	867, 870, 894
Crump v. McMurtry, 8 Mo. 408.....	1504
Crutchfield v. Hunter (N. C.), 50 S. E. 557.....	346
Cubbage v. Franklin, 62 Mo. 364.....	1191
Cud v. Rutter, 1 P. Wms. 570.....	1258, 1268
Cuff v. Dorland, 50 Barb. 438.....	1309, 1310
Cughan v. Larson (N. D.), 100 N. W. 1088.....	1333, 1336
Culbertson v. Cincinnati, 16 Ohio, 574.....	1228
Cullen v. Dawson, 24 Minn. 66.....	80, 84
Culliford v. Walser, 158 N. Y. 65, 70 Am. St. Rep. 437, 52 N. E. 648.....	1477, 1482
Cully v. Shirk, 131 Ind. 76, 31 Am. St. Rep. 414, 30 N. E. 882...	1114
Culmer v. Wilson, 13 Utah, 129, 57 Am. St. Rep. 713, 44 Pac. 833	1476, 1477, 1490
Culver v. Culver, 2 Root (Conn.), 278.....	1194
Culver v. Guyer, 129 Ala. 602, 29 South. 779.....	270
Culver v. H. R. Allen, Sr. Med. & S. Assn., 206 Ill. 40, 69 N. E. 53.....	426, 427
Cumberland Glass Mfg. Co. v. Glass Bottle Blowers' Assn., 59 N. J. Eq. 49, 46 Atl. 208.....	793, 1042
Cumberland Lumber Co. v. Clinton Hill L. Co., 64 N. J. Eq. 521, 54 Atl. 452.....	410
Cumberland Tel. & Tel. Co. v. United Electric Ry. Co., 42 Fed. 273, 12 L. R. A. 544.....	1065
Cummings v. Cummings (R. I.), 57 Atl. 302.....	531
Cummings v. Kendall County, 7 Tex. Civ. App. 164, 26 S. W. 439.	766
Cummings v. May, 110 Ala. 479, 20 South. 307.....	1512
Cummings v. Merchants' Nat. Bank, 101 U. S. 153, 25 L. ed. 903	646, 654, 658, 661
Cummings v. St. Louis, 90 Mo. 259, 2 S. W. 130.....	941
Cummings v. Steele, 6 Idaho, 666, 59 Pac. 15.....	261, 263, 265
Cummins v. Perkins, [1899] 1 Ch. 16.....	119
Cunningham v. Butler, 142 Mass. 47, 56 Am. Rep. 657, 6 N. E. 72.....	1127
Cunningham v. Fitzgerald, 138 N. Y. 165, 33 N. E. 840, 20 L. R. A. 244.....	942, 957
Cunningham v. Halley etc. Co., 121 Fed. 720, 58 C. C. A. 140....	1466
Cunningham v. Rome R. R. Co., 27 Ga. 499.....	936, 940
Curl Brothers, Ltd., v. Webster, [1904] 1 Ch. 685.....	526
Curran v. Arkansas, 15 How. 304, 14 L. ed. 705.....	1460
Curran v. Craig, 22 Fed. 101.....	344
Curran v. Galen, 152 N. Y. 33, 57 Am. St. Rep. 496, 46 N. E. 297, 37 L. R. A. 802.....	1016, 1020
Curran v. Holyoke Water Co., 116 Mass. 90.....	1315, 1316
Curre v. Bowyer, 5 Beav. 6, note (b).....	1376
Currier v. Davis, 68 N. H. 596, 41 Atl. 239.....	932
Currier v. Howard, 14 Gray, 511.....	1382

Currier v. Studley, 159 Mass. 17, 33 N. E. 709.....	1532
Currier's Co. v. Corbett, 4 De Gex, J. & S. 764.....	1070
Currier's Co. v. Corbett, 2 Drew & S. 355, 360.....	952
Curriu v. Spraul, 10 Gratt. (Va.) 145	1200
Curry v. Glass, 25 N. J. Eq. 108.....	1431
Curry v. Peebles, 83 Ala. 225, 83 South. 622.....	1235
Curtenius v. Hoyt, 37 Mich. 583.....	610, 622
Curtin v. Stout (W. Va.), 50 S. E. 810.....	826
Curtis v. Bryan, 2 Daly, 312.....	1000
Curtis v. Curtis, 2 Brown Ch. 620.....	1167, 1169
Curtis v. East Saginaw, 35 Mich. 508.....	1228, 1235
Curtis v. Gordon, 62 Vt. 340, 495, 20 Atl. 820.....	477
Curtis v. Lakin, 94 Fed. 251, 36 C. C. A. 222.....	48, 56
Curtis v. Leavitt, 15 N. Y. 45.....	372
Curtis v. Parks, 55 Cal. 106.....	1485
Curtis v. Poland, 66 Tex. 511, 2 S. W. 39.....	1212
Curtis v. Schell, 129 Cal. 208, 79 Am. St. Rep. 107, 61 Pac. 951	1101, 1105
Curtis v. Snead, 12 Gratt. (Va.) 264.....	1206
Curtis v. Sutter, 15 Cal. 259.....	1242, 1245, 1249
Curtis v. Williams, 35 Ill. App. 518.....	99
Cushing v. Blake, 3 Stew. Eq. 689, 695.....	1380
Cushing v. Perot, 175 Pa. St. 66, 52 Am. St. Rep. 835, 34 Atl. 447, 34 L. R. A. 737	448
Cushman v. Thayer Mfg. Co., 76 N. Y. 365, 32 Am. Rep. 315....	1396
Cutler v. Babcock, 81 Wis. 195, 29 Am. St. Rep. 882, 51 N. W. 420.....	1348, 1352
Cutsinger v. Ballard, 115 Ind. 93, 17 N. E. 206.....	1352
Cutter v. Iowa Water Co., 128 Fed. 505.....	54
Cutter v. Pollock, 7 N. D. 631, 76 N. W. 235.....	428
Cutting v. Dana, 25 N. J. Eq. 265.....	1267
Cutting v. Tavares, O. & A. R. Co., 61 Fed. 150, 9 C. C. A. 401	413, 414

D

Dabbs v. Nugent, 11 Jur., N. S., 943.....	1516
Dagan v. Mayor, 70 Md. 1, 16 Atl. 501.....	1211
Dagenbaum, In re, [1873] L. R. 8 Ch. 1022.....	1341
Daggers v. Van Dyck, 37 N. J. Eq. 130.....	41
Daggett v. Ayer, 65 N. H. 82, 18 Atl. 169.....	1144
Daggett v. Gray (Cal.), 40 Pac. 959.....	362, 364
Dailey v. Nassau County R. Co., 65 N. Y. Supp. 396, 52 App. Div. 272.....	602
Dailey v. New Haven, 60 Conn. 314, 22 Atl. 945, 14 L. R. A. 69..	606
Daily v. Minnick, 117 Iowa, 563, 91 N. W. 913, 60 L. R. A. 840..	1355
Daire v. Beversham, Nels. 76.....	1379
Daisy Roller Mills v. Ward, 6 N. D. 317, 70 N. W. 271.....	1445
Dakota Loan & Trust Co. v. County of Coddington, 9 S. D. 159, 68 N. W. 314.....	738
Dalby v. Pullen, 3 Sim. 29, 39.....	1330, 1365, 1367
Dale v. Kant, 58 Ind. 584.....	118
Dale v. Lister, cited in 16 Ves. 7.....	1363
Dale v. Roosevelt, 5 Johns. Ch. 174.....	1090
Dall v. The Confidence Silver Min. Co., 3 Nev. 535, 93 Am. Dec. 419.....	1208
Dallin v. McIvor, 12 Ind. App. 150, 39 N. E. 765.....	1094
Dallins v. Linsey, 89 Ala. 217, 7 South. 234.....	261

Dalmer v. Dashwood , 2 Cox, 378.....	182
Dakon v. Cleveland etc. Ry. Co. , 144 Ind. 121, 43 N. E. 130.....	889
Dalton v. Milwaukee Meeh. Ins. Co. (Iowa) , 102 N. W. 120.....	1139
Dalton v. Railway Co. , 74 E. C. L. (12 Com. B.) 458.....	99
Daly v. Kelly , 4 Dow, 417, 440.....	492
Daly v. Palmer , 6 Blatchf. 256, Fed. Cas. No. 3552.....	786
Daly v. Pennie , 86 Cal. 552, 21 Am. St. Rep. 61, 25 Pac. 67.....	1075
Daly v. Smith , 38 N. Y. Super. Ct. 158.....	519, 520
Dambmann v. Schulting , 75 N. Y. 55.....	1143
Dameron v. Jameson , 71 Mo. 90.....	1199, 1202
Damron v. Campion , 24 Misc. Rep. 234, 53 N. Y. Supp. 543.....	1194
Dana v. Craddock , 66 N. H. 593, 32 Atl. 757.....	907
Dana v. Valentine , 5 Met. 8.....	917
Dana v. Wentworth , 111 Mass. 291.....	505
Dance v. Goldingham , L. R. 8 Ch. 902.....	487
Dandridge v. Harris , 1 Wash. (Va.) 326, 1 Am. Dec. 465.....	1099
Danenbauer v. Devine , 51 Tex. 480, 32 Am. Rep. 627.....	943
Danforth v. Smith , 23 Vt. 247.....	1485
Daniel v. Ferguson , [1891] L. R. 2 Ch. D. 27.....	960, 961, 962
Daniel v. Leitch , 13 Gratt. 195.....	1170
Daniel v. Palmer , 124 Mich. 335, 82 N. W. 1067.....	1438
Daniel v. Stewart , 55 Ala. 278.....	1226, 1228, 1232, 1233
Daniels v. Benedict , 50 Fed. 347.....	1182
Daniels v. Davison , 16 Ves. 249, 253.....	1375
Daniels v. Keokuk Waterworks , 61 Iowa, 549, 16 N. W. 705.....	908
Danvers v. Dorrity , 14 Abb. Pr. (N. Y.) 206.....	1182, 1534
Darbey v. Whitaker , 4 Drew, 134, 139, 140.....	1274
Darby v. Darby , 3 Drew. 495, 501.....	1189 1534
Darcin v. Wells , 61 How. Pr. 259.....	152
Darden v. Cowper , 7 Jones, 210, 75 Am. Dec. 461.....	1522
Dargin v. Hewlitt , 115 Ala. 510, 22 South. 128.....	1516
Darley etc. Co. v. Mitchell , L. E. 11 App. Cas. 127.....	945
Darling v. Gunn , 50 Ill. 424.....	678
Darlington etc. Co. v. Pee Dee etc. Co. , 62 S. C. 196, 40 S. E. 169.....	959
Darragh v. H. Wetter Mfg. Co. , 49 U. S. App. 1, 23 C. C. A. 609, 78 Fed. 7.....	228
Darrah v. Boyce , 62 Mich. 480, 29 N. W. 102.....	1522
Darrow v. Calkins , 154 N. Y. 503, 61 Am. St. Rep. 637, 49 N. E. 61, 48 L. R. A. 299.....	1535
Darrow v. Summerhill , 93 Tex. 92, 77 Am. St. Rep. 833, 53 S. W. 680.....	1495 1497 1509, 1510
Darst v. Griffin , 31 Neb. 668, 48 N. W. 819.....	718
Darst v. People , 62 Ill. 306.....	588
Darusmont v. Patton , 4 Lea, 597.....	197
Dastervignes v. United States , 122 Fed. 30.....	828
Daubenspeck v. Grear , 18 Cal. 443.....	826
Daugherty v. Bogy , 3 Ind. Ter. 197, 53 S. W. 542.....	1423
Daugherty etc. Co. v. Kittanning etc. Mfg. Co. , 178 Pa. St. 215, 35 Atl. 1111.....	870, 919
Davelaar v. Blue Mound Inv. Co. , 110 Wis. 470, 86 N. W. 185	263, 274
Davenport v. Alabama & C. R. Co. , 2 Woods, 519, Fed. Cas. No. 3588.....	424
Davenport v. Buffington , 97 Fed. 234, 38 C. C. A. 453, 46 L. R. A. 377.....	611, 631
Davenport v. Davenport , 7 Hare, 217.....	838
Davenport v. Kelly , 42 N. Y. 193.....	289, 290, 1453
Davenport v. Kleinschmidt , 6 Mont. 502, 13 Pac. 249.....	600, 610, 625

Davenport v. Lines, 72 Conn. 118, 44 Atl. 17.....	374
Davenport v. Magoon, 13 Or. 1, 57 Am. Rep. 1	803
Davenport v. Stephens, 95 Wis. 456, 70 N. W. 661.....	1234
Davenport v. Walker, 57 App. Div. 221, 68 N. Y. Supp. 161....	620
Davidson v. Burke, 143 Ill. 139, 36 Am. St. Rep. 367, 32 N. E. 514.....	1452
Davidson v. Calkins, 92 Fed. 230.....	1228
Davidson v. Davidson, 42 Ark. 362.....	1146
Davidson v. Dockery, 179 Mo. 687, 78 S. W. 624.....	1424, 1425
Davidson v. Hawkeye Ins. Co., 71 Iowa, 532, 60 Am. Rep. 818, 32 N. W. 514.....	1389
Davidson v. Isham, 9 N. J. Eq. 186.....	884
Davidson v. Mayor etc. of Baltimore, 96 Md. 509, 53 Atl. 1121....	631
Davidson v. Reed, 111 Ill. 167, 53 Am. Rep. 613.....	828
Davidson v. Sadler, 23 Tex. Civ. App. 600, 57 S. W. 54.....	1002
Davidson v. Thompson, 22 N. J. Eq. 84.....	1213, 1216
Davies v. Racer, 72 Hun, 43, 25 N. Y. Supp. 293.....	527
Davies v. Boston, 129 Mass. 377.....	1226
Davies Co. v. Goodwin, 25 Ky. Law Rep. 1081, 77 S. W. 185....	629
Davies Co. Dist. Co. v. Martinoni, 117 Fed. 186.....	993
Davis v. American Society, 75 N. Y. 362.....	1084
Davis v. Atkins, 18 Ky. Law Rep. 73, 35 S. W. 271.....	891
Davis v. Auld, 96 Me. 559, 53 Atl. 118.....	897
Davis v. Booth, 131 Fed. 31, 65 C. C. A. 269 (affirming 127 Fed. 875).....	523
Davis v. Burnett, 77 Tex. 3, 13 S. W. 613	740, 741
Davis v. Butters Lumber Co., 132 N. C. 233, 43 S. E. 650.....	305
Davis v. Chapman, 83 Va. 67, 5 Am. St. Rep. 251, 1 S. E. 472....	190
Davis v. Clark, 26 Ind. 424, 89 Am. Dec. 471.....	1133
Davis v. Clements, 148 Ind. 605, 62 Am. St. Rep. 539, 47 N. E. 1056	1075
Davis v. Clough, 8 Sim. 262.....	488
Davis v. Corporation of Liecester, [1894] 2 Ch. 208.....	505
Davis v. Dale, 150 Ill. 239, 37 N. E. 215.....	179
Davis v. Davis, 1 Del. Ch. 256.....	1519
Davis v. Davis, 2 Ired. Eq. 607.....	1216
Davis v. Davis, 60 Miss. 615.....	1527
Davis v. Davis, 5 Mo. 183.....	1170
Davis v. Duncan, 19 Fed. 477	283, 351
Davis v. Emerson, 17 Me. 64.....	1489
Davis v. Fasig, 128 Ind. 271, 27 N. E. 726.....	632
Davis v. Foreman, [1894] 3 Ch. 654.....	497, 521
Davis v. Frankenlust Tp., 118 Mich. 494, 76 N. W. 1045.....	830
Davis v. Gray, 16 Wall. 203, 21 L. ed. 447.....	305, 306, 384, 575, 584
Davis v. Hone, 2 Schoales & L. 341, 347.....	1257
Davis v. Industrial Mfg. Co., 114 N. C. 321, 19 S. E. 371, 23 L. R. A. 322.....	360, 369
Davis v. Ladoga Creamery Co., 128 Ind. 222, 27 N. E. 494.....	360, 363, 378
Davis v. Lambertson, 56 Barb. 480.....	920, 967
Davis v. Lang, 153 Ill. 175, 38 N. E. 635.....	1206
Davis v. Leo, 6 Ves. 784	809, 810, 816
Davis v. Londgreen, 8 Neb. 43.....	872
Davis v. Mayor etc., 1 Duer (N. Y.), 451.....	598
Davis v. Mayor etc., 14 N. Y. 506, 67 Am. Dec. 186.....	598, 926, 928
Davis v. Montgomery Furnace etc. Co. (Ala.), 8 South. 496....	1466
Davis v. Morris, 76 Va. 21.....	29

Davis v. Niswonger, 145 Ind. 426, 44 N. E. 542.....	143
Davis v. Norris, 8 Pa. St. 125.....	1210
Davis v. Port Arthur Channel & Dock Co., 87 Fed. 512, 31 C. C. A. 99.....	766
Davis v. Reaves, 2 Lea (Tenn.), 649.....	154
Davis v. Sawyer, 133 Mass. 289, 43 Am. Rep. 519.....	907
Davis v. Settle, 43 W. Va. 17, 26 S. E. 557.....	1197
Davis v. Smith, 5 Ga. 274, 47 Am. Dec. 279.....	1502
Davis v. Snead, 33 Gratt. 709.....	354
Davis v. Taylor, 86 Ga. 506, 12 S. E. 881.....	156
Davis v. Thomas, 1 Russ. & M. 506.....	1341
Davis v. Tileston, 47 U. S. (6 How.) 114, 12 L. ed. 366.....	1099
Davis v. Turvey, 32 Beav. 554.....	1215
Davis v. United Engineers (1898), 28 App. Div. 396, 51 N. Y. Supp. 180.....	1016
Davis v. United States Electric etc. Co., 77 Md. 35, 25 Atl. 982.....	207, 213
Davis v. Williams, 121 Ala. 542, 25 South. 704.....	37
Davis v. Wilson (N. J.), 56 Atl. 704.....	1520
Davis v. Zimmerman, 91 Hun, 489, 36 N. Y. Supp. 303.....	793, 1039
Davis & Farnum Mfg. Co. v. Los Angeles, 189 U. S. 207, 23 Sup. Ct. 498.....	1084
Davison v. Davison, 13 N. J. Eq. 246.....	1259, 1260
Davison v. Gregory, 132 N. C. 389, 43 S. E. 916.....	1498, 1500, 1503
Dawson v. Parsons, 66 Hun. 628, 21 N. Y. Supp. 212.....	149
Dawson v. Sims, 14 Or. 561, 13 Pac. 506.....	1424, 1430
Dawson v. Yates, 1 Beav. 301.....	198
Dawson Bank v. Harris, 84 N. C. 206.....	1426
Day v. Cohn, 65 Cal. 508, 4 Pac. 511.....	1335, 1352
Day v. Cummings, 19 Vt. 496.....	1077
Day v. Day, 84 N. C. 408.....	1145
Day v. Ft. Scott Inv. Co., 153 Ill. 293, 38 N. E. 567.....	1161
Day v. Hunt, 112 N. Y. 191, 19 N. E. 414.....	1257, 1337
Day v. Merry, 16 Ves. 375.....	813
Day v. Newman, 2 Cox, 77, 80, 81.....	1313
Day v. Postal Tel. Co., 66 Md. 354, 7 Atl. 608.....	286
Day v. Shiver, 137 Ala. 185, 33 South. 831.....	1143
Day v. Washburn, 24 How. 355, 16 L. ed. 714.....	1451
Day v. Wells, 30 Beav. 220.....	1304, 1305
Day Land & Cattle Co. v. State, 68 Tex. 527, 4 S. W. 865.....	1239
Dayton v. Carter, 206 Pa. St. 491, 56 Atl. 30.....	558
Dayton v. Commercial Bank, 6 Rob. (La.) 17.....	1135
Dayton v. Drainage Commrs., 128 Ill. 271, 21 N. E. 198.....	872
Dayton v. Multnomah County, 34 Or. 239, 55 Pac. 23.....	735
Dayton v. Wilkes, 17 How. Pr. 510.....	390
Dayton Hydraulic Co. v. Felsenthall, 116 Fed. 961, 54 C. C. A. 537.....	391
Deaconess etc. Hospital v. Bontjes, 104 Ill. App. 484.....	881
Deaderick v. Mitchell, 6 Baxt. 35.....	1086
Dean v. Anderson, 34 N. J. Eq. 496.....	1258
Dean v. Ann Arbor R. R. (Mich.), 100 N. W. 773.....	931
Dean v. Davis, 51 Cal. 406.....	669
Dean v. Madison, 9 Wis. 402.....	753, 1248
Dean v. Mitchell, 4 J. J. Marsh. 451.....	1382
Dean v. O'Meara, 47 Ill. 120.....	1212
Deane v. Todd, 22 Mo. 90.....	711
Dean etc. Chester v. Smelting Corp., 85 L. T. 67.....	921
Dearborn v. Taylor, 18 N. H. 153.....	1503

Dearing v. Bank of Charleston, 5 Ga. 497, 48 Am. Dec. 300.....	1115
De Berrera v. Frost (Tex. Civ. App.), 77 S. W. 637.....	168
Debs, In re, 158 U. S. 564, 15 Sup. Ct. 900, 39 L. ed. 1092.....	792, 797, 1045
De Bussche v. Alt, L. R. 8 Ch. Div. 286, 314.....	33
Decell v. Hazelhurst etc. Co., 83 Miss. 346, 35 South. 761.....	1521
Deck v. Whitman, 96 Fed. 873.....	25, 26
Decker v. Evansville Suburban & N. Ry. Co., 133 Ind. 493, 33 N. E. 349.....	769
Decker v. Gardner, 124 N. Y. 334, 26 N. E. 814, 11 L. ed. 480....	380
Decker v. McGowan, 59 Ga. 805.....	675
Decker v. Schulze, 11 Wash. 47, 48 Am. St. Rep. 858, 39 Pac. 261, 27 L. R. A. 335.....	1157
Dederer v. Voorhies, 81 N. Y. 153.....	1228, 1235
Deeds v. Stephens (Idaho), 79 Pac. 77.....	1287
Deegan v. Neville, 127 Ala. 471, 85 Am. St. Rep. 137, 29 South. 173.....	832
Deems v. Baltimore, 80 Md. 164, 30 Atl. 648, 45 Am. St. Rep. 339, 26 L. R. A. 54.....	633
Deep River Co. v. Fox, 4 Ired. Eq. (39 N. C.) 61.....	825
Deere v. Guest, 1 Mylne & C. 516.....	850
Deering v. Moore, 86 Me. 181, 41 Am. St. Rep. 534, 28 Atl. 988.	1485
Deery v. McClintock, 31 Wis. 202.....	1201
Defiance v. Schmidt, 123 Fed. 1.....	1139
Degener v. Stiles, 53 Hun, 637, 6 N. Y. Supp. 474.....	174
De Godey v. Godey, 39 Cal. 162.....	1189
De Graffenried v. Brunswick etc. R. R. Co., 57 Ga. 22... 330, 331, 334	
De Gray v. Monmouth Beach Clubhouse Co., 50 N. J. Eq. 329, 24 Atl. 388.....	504
De Groot v. Peters, 124 Cal. 406, 71 Am. St. Rep. 91, 57 Pac. 209.	858
De Hierapolis v. Lawrence, 99 Fed. 321.....	1419
Deitzsch v. Huidekoper, 103 U. S. 494, 26 L. ed. 497.....	1080
De Klyn v. Watkins, 3 Sandf. Ch. 185.....	29, 30
Delahanty v. Warner, 75 Ill. 185, 20 Am. Rep. 237.....	592
Delaney v. Brown, 72 Vt. 344, 47 Atl. 1067.....	1095
De La Vergne etc. Co. v. Palmetto Brewing etc. Co., 72 Fed. 579.....	230, 327, 328
Delaware & Hudson Canal Co. v. Clark, 80 U. S. 311, 20 L. ed. 581.....	990
Delaware County's Appeal, 119 Pa. St. 159, 13 Atl. 62.....	606, 766
Delaware L. & W. R. Co. v. Breckenridge, 55 N. J. Eq. 141, 35 Atl. 756.....	841
Delaware L. & W. R. Co. v. Breckenridge, 57 N. J. Eq. 154, 41 Atl. 966, affirmed in 58 N. J. Eq. 581, 43 Atl. 1097.....	830
Delaware, L. & W. R. Co. v. Central etc. Co., 43 N. J. Eq. 605, 12 Atl. 374, 13 Atl. 615.....	1069
Delaware, L. & W. R. Co. v. Corwith, 5 N. Y. Supp. 792, 16 Civ. Proc. Rep. 312.....	65
Delaware, L. & W. R. Co. v. Erie R. Co., 21 N. J. Eq. 298.....	249
Delaware, L. & W. R. Co. v. Frank, 110 Fed. 689.....	1063, 1064
Delaware L. & W. R. R. Co. v. Oxford Iron Co., 38 N. J. Eq. 151.....	1479, 1491
Delaware Surety Co. v. Layton (Del. Ch.), 50 Atl. 378.....	584
Delevan v. Duncan, 49 N. Y. 485, 487.....	1331
Deloughrey v. Hinds, 23 Mont. 260, 58 Pac. 709.....	714
De Louis v. Meek, 2 G. Greene, 55, 50 Am. Dec. 491.....	1093
Delozier v. Bird, 123 N. C. 689, 31 S. E. 834.....	299, 303, 304, 323

Delozier v. Bird, 125 N. C. 493, 34 S. E. 643.....	299, 303
Delphi v. Bowen, 61 Ind. 33.....	686, 687, 689
Delz v. Winfree (1891), 80 Tex. 400, 26 Am. St. Rep. 755, 16 S. W. 111	1019, 1048
Demarest v. Rutan, 40 N. J. Eq. 356, 2 Atl. 647.....	1531
De Martin v. Phelan, 51 Fed. 865, 2 C. C. A. 523, 7 U. S. App. 233, affirming 47 Fed. 761.....	49
De Mattos v. Gibson, [1859] 4 De Gex & J. 276.....	519
Demeter v. Wilcox, 115 Mo. 634, 37 Am. St. Rep. 422, 22 S. W. 613	1499, 1511
Deming v. James, 72 Ill. 78.....	677
Demopolis v. Webb, 87 Ala. 659, 6 South. 408.....	873
De Moss v. Economy F. & C. Co., 74 Mo. App. 117.....	1086
Dempsie v. Darling (Wash.), 81 Pac. 152.....	872, 931
Dempster v. United Traction Co., 205 Pa. St. 70, 54 Atl. 501....	772
Denham v. Williams, 39 Ga. 312.....	1401
Denise v. Village of Fairport, 11 Misc. Rep. 199, 32 N. Y. Supp. 97	723
Denning v. Chapman, 11 How. Pr. (N. Y.) 383.....	489
Denning v. Corwin, 4 Wend. 208.....	809
Dennis v. Jones, 44 N. J. Eq. 513, 6 Am. St. Rep. 899, 14 Atl. 913.....	1160, 1161
Dennis v. Mobile & M. R. Co., 137 Ala. 649, 97 Am. St. Rep. 69, 35 South. 30.....	932
Dennis v. Mobile etc. Co., 139 Ala. 109, 35 South. 651.....	864
Dennis v. Northern Pac. Ry. Co., 20 Wash. 320, 55 Pac. 210....	1139, 1141
Dennison v. Kansas, 95 Mo. 430, 8 S. W. 429.....	712
Dennison Mfg. Co. v. Scharf Tag, Label & Box Co. (C. C. A.), 135 Fed. 625.....	994
Denny v. Broadway Nat. Bank, 118 Ga. 221, 44 S. E. 982....	399
Denny v. Hancock, L. R. 6 Ch. App. 1.....	1302, 1303, 1304
Dent v. Auction Mart Co., L. R. 2 Eq. 238.....	823, 935, 940, 944, 953, 954, 964
Dent v. King, 1 Ga. 200, 44 Am. Dec. 638.....	1483
Dent v. Long, 90 Ala. 172, 7 South. 640.....	1161
Denton v. Nanny, 8 Barb. 618.....	1169
Denton v. Scully, 26 Minn. 325, 4 N. W. 41.....	1394
Denver v. Beede, 25 Colo. 172, 54 Pac. 624.....	634
Denver & R. G. R. Co. v. Gunning (Colo.), 80 Pac. 727.....	436
Denver & R. G. R. Co. v. United States, 124 Fed. 156, 59 C. C. A. 579.....	484, 1044
Denver & S. F. R. Co. v. Domke, 11 Colo. 247, 17 Pac. 777.....	774
Denver, U. & P. Ry. Co. v. Barsaloux, 15 Colo. 290, 25 Pac. 165, 10 L. R. A. 89.....	774
Department of Buildings, City of N. Y. v. Jones, 24 Misc. Rep. 490, 53 N. Y. Supp. 836.....	919
De Pierres v. Thorn, 4 Bosw. 266.....	1258
De Puy v. Wabash, 133 Ind. 336, 32 N. E. 1016.....	689, 691
Dering v. Earl of Winchelsea, 1 Cox, 318, 1 Lead. Cas. Eq. 120, 124, 134.....	1476, 1482
De Rivafrnoli v. Corsetti, 4 Paige, 270, 25 Am. Dec. 532.....	1275
Derringer v. Plate, 29 Cal. 292, 87 Am. Dec. 170.....	990
De Sale v. Millard, 108 Mich. 581, 66 N. W. 481.....	858
Desborough v. Harris, 5 De Gex, M. & G. 439, 455.....	72, 86

Des Moines v. Des Moines Waterworks Co., 95 Iowa, 348, 64 N. W. 269.....	1063
Des Moines City R. Co. v. City of Des Moines, 90 Iowa, 770, 58 N. W. 906, 26 L. R. A. 767.....	632
Des Moines Gas Co. v. City of Des Moines, 44 Iowa, 505, 24 Am. Rep. 756.....	601, 603
Des Moines Gas Co. v. West, 44 Iowa, 25.....	174
Detroit v. Detroit City etc. Co., 56 Fed. 867.....	930
Detroit v. Donovan, 127 Mich. 604, 8 Detroit Leg. N. 465, 86 N. W. 1032.....	705
Detroit v. Martin, 34 Mich. 170, 173, 22 Am. Rep. 512.....	1222
Detroit v. Wayne Circuit Judge, 127 Mich. 604, 8 Detroit Leg. N. 465, 86 N. W. 1032.....	644
Detroit & B. Plank Road Co. v. Oakland Ry. Co., 131 Mich. 663, 92 N. W. 346.....	535
Detroit & Erin P. R. Co. v. Eldredge, 109 Mich. 371, 67 N. W. 531.....	928
Detroit & M. R. R. v. Brown, 37 Mich. 533.....	1086
Detroit Copper & Brass Rolling Mills v. Ledwidge, 162 Ill. 305, 44 N. E. 751 (affirming 58 Ill. App. 351).....	1429, 1431, 1432, 1434
Detroit, G. H. & M. Ry. Co. v. Detroit, 91 Mich. 444, 52 N. W. 52.....	768
Detroit, G. H. & M. R. Co. v. Powers, 138 Fed. 264.....	660
Deuchatill v. Robinson, 24 La. Ann. 176.....	1245
De Uprey v. De Uprey, 27 Cal. 329, 87 Am. Dec. 81.....	1182, 1206
Deusler v. City of Johnstown, 24 App. Div. 608, 48 N. Y. Supp. 683.....	969
Devell v. Hinds, 8 Ohio Dec. 177.....	262
De Veney v. Gallagher, 20 N. J. Eq. 33.....	828, 1173, 1175
Dever v. City of Junction City, 45 Kan. 417, 25 Pac. 861.....	698
Devereaux v. Fleming, 47 Fed. 177.....	150
De Ver Warner v. Bassett, 7 Fed. 468, 19 Blatchf. 145.....	983
Devinney v. Corey, 52 Hun, 612, 5 N. Y. Supp. 289, affirmed 127 N. Y. 655, 28 N. E. 254.....	1357
Devinney v. Mann, 24 Kan. 682.....	1075
Devlin v. McLeod, 135 Fed. 164.....	994
Devoll v. Scales, 49 Me. 320.....	1099
Devron v. First Municipality, 4 La. Ann. 11.....	634
De Walt v. Kinard, 19 S. C. 286.....	108, 154
Deweese v. Reinhard, 165 U. S. 386, 17 Sup. Ct. 340, 41 L. ed. 757.....	1075
Dewey v. White, 65 N. C. 225.....	86, 94
Dewey Hotel Co. v. United States Elect. Lighting Co., 17 App. D. C. 356.....	611
De Wick v. Dobson, 18 App. Div. 399, 46 N. Y. Supp. 390.....	798, 1056
De Wilton v. Saxon, 6 Ves. 106.....	513
Dewing v. Woods, 111 Fed. 575, 49 C. C. A. 443.....	1230
De Winton v. Mayor of Brecon, 28 Beav. 200.....	302
De Witt v. Hayes, 2 Cal. 463.....	1227
De Witt v. Van Schoyk, 110 N. Y. 7 (affirming 35 Hun, 103), 6 Am. St. Rep. 342, 17 N. E. 425.....	871, 931, 1225
Dey v. Martin, 78 Va. 1.....	1111
De Zouche v. Garrison, 140 Pa. St. 430, 21 Atl. 450.....	88
Dial v. Reynolds, 96 U. S. 340, 44 L. ed. 644.....	1079
Dial's Exrs. v. Rogers, 4 Desaus. Eq. 175.....	1516
Diamond v. Mankato, 89 Minn. 48, 93 N. W. 911.....	626

Diamond Match Co. v. Roeber , 106 N. Y. 473, 60 Am. Rep. 464, 13 N. E. 419.....	524, 536
Diamond Match Co. v. Taylor , 83 Md. 394, 34 Atl. 1015.....	410
Dias v. Glover , 1 Hoff. Ch. (N. Y.) 76.....	1189
Dice v. McCauley , 22 Or. 456, 30 Pac. 160.....	1174
Dick v. Struthers , 25 Fed. 103.....	356, 978
Dicken v. McKinley , 163 Ill. 318, 54 Am. St. Rep. 471, 45 N. E. 134.....	1357
Dickenson v. Grand Junction Canal Co. , 15 Beav. 260, 2 Keener's Cas. on Eq. Jur. 312.....	531
Dickerson v. Board of Commissioners of Ripley County , 6 Ind. 128, 63 Am. Dec. 373.....	1108
Dickerson v. Cass County Bank , 95 Iowa, 392, 64 N. W. 395....	239
Dickeshied v. Exchange Bank , 28 W. Va. 340.....	65, 100, 101
Dickey v. Bates , 13 Misc. Rep. 489, 35 N. Y. Supp. 525.....	294
Dickey v. Reed , 78 Ill. 261.....	591
Dickey v. Rogers , 7 Martin (La.), N. S., 588.....	1477
Dickey v. Thompson , 8 B. Mon. 313.....	1486
Dickinson v. Dickinson , 29 Conn. 600.....	1534
Dickinson v. Hoomes' Admr. , 8 Gratt. 353.....	30
Dickinson v. Lewis , 34 Ala. 638.....	1517
Dickman v. Dryden , 90 Minn. 244, 95 N. W. 1120.....	44
Dickson v. Chorn , 6 Iowa, 19, 71 Am. Dec. 382.....	1402
Dickson v. Dows , 11 N. D. 404, 92 N. W. 797.....	850
Dickson v. Stewart (Neb.), 98 N. W. 1085.....	1295
Diefendorf v. Diefendorf , 132 N. Y. 100, 30 N. E. 375.....	1246
Dietrichsen v. Cabburn , 2 Phill. Ch. 52.....	497, 529, 1300
Dietz v. City of Neenah , 91 Wis. 422, 64 N. W. 299, 65 N. W. 500	756
Diggs v. Walcott , 8 U. S. (4 Cranch) 179, 2 L. ed. 587.....	1079
Dilling v. Foster , 21 S. C. 334.....	195, 262
Dillingham v. Anthony , 73 Tex. 47, 15 Am. St. Rep. 753, 11 S. W. 139, 3 L. R. A. 634.....	339, 341
Dillingham v. Blake (Tex. Civ. App.), 32 S. W. 77.....	412
Dillingham v. Hawk , 60 Fed. 494, 9 C. C. A. 101, 23 L. R. A. 517.....	341
Dillman v. Nadelhoffer , 162 Ill. 625, 45 N. E. 680.....	1434
Dillon v. Heller , 39 Kan. 599, 18 Pac. 693.....	27
Dillon v. O. S. L. etc. Ry. Co. , 66 Fed. 622.....	328, 451
Dills v. Doeblor , 62 Conn. 366, 36 Am. St. Rep. 345, 26 Atl. 398, 20 L. R. A. 432.....	536, 537
Dilly v. Barnard , 8 Gill & J. 170.....	1078
Diman v. Providence etc. R. Co. , 5 R. I. 130.....	1140
Dimon v. Shewan , 34 Misc. Rep. 72, 69 N. Y. Supp. 402.....	917
Dimond v. Rogers , 203 Ill. 464, 67 N. E. 968.....	1432
Dinley v. McCullagh , 92 Hun, 454, 36 N. Y. Supp. 1007.....	101
Dinsmore v. Southern Express Co. , 92 Fed. 714.....	576
Dinwiddie v. Bailey , 6 Ves. 136.....	1517
Dinwiddie v. Self , 145 Ill. 290, 33 N. E. 892.....	52, 1142
Dinwiddie v. Smith , 141 Ind. 318, 40 N. E. 748.....	1200
Diplock v. Hammond , 2 Smale & G. 141.....	82
Dibrow v. Folger , 5 Abb. Pr. 54.....	1204
Disher v. Disher , 45 Neb. 100, 63 N. W. 368.....	804
Dispeau v. First Nat. Bank , 24 R. I. 508, 53 Atl. 868.....	45
District Tp. v. Barrett , 47 Iowa, 110.....	591
District Tp. v. Dist. Tp. of Cass , 54 Iowa, 115, 6 N. W. 163..	828
District Tp. v. Myles , 109 Iowa, 541, 80 N. W. 544.....	591

Dixon v. Detroit, 86 Mich. 516, 49 N. W. 628.....	706
Dixon v. Dixon, [1904] 1 Ch. 161.....	305, 323
Dixon v. Hammond, 2 Barn. & Ald. 310, 313.....	87
Dixon v. Holden, L. R. 7 Eq. 488.....	1058
Dixon v. National L. I. Co., 168 Mass. 48, 46 N. E. 430.....	71
Dixon v. Wartens, 8 Jones, 451.....	1215
Dixon Crucible Co. v. Guggenheim, 2 Brewst. 321.....	1000
Doane v. Lake St. El. R. Co., 165 Ill. 510, 56 Am. St. Rep. 265, 46 N. E. 520, 36 L. R. A. 97.....	774, 941
Doane v. Millville Ins. Co., 45 N. J. Eq. 274, 17 Atl. 625..	289, 290
Doane v. Preston, 183 Mass. 569, 67 N. E. 867.....	45
Dobbin v. Rex, 106 N. C. 444, 11 S. E. 260.....	1210
Dobbins v. Coles, 59 N. J. Eq. 80, 45 Atl. 444.....	1442
Dobbins v. Los Angeles, 195 U. S. 223, 25 Sup. Ct. 18.....	635
Dobbins v. McNamara, 113 Ind. 54, 3 Am. St. Rep. 626, 14 N. E. 887..	1114
Dobbs v. Norcross, 24 N. J. Eq. 327, 331.....	1321
Dobie v. Fidelity & Casualty Co. of New York, 95 Wis. 540, 60 Am. St. Rep. 135, 70 N. W. 482.....	1491
Dock v. Dock, 180 Pa. St. 14, 57 Am. St. Rep. 617, 36 Atl. 411..	1264
Dockery v. French, 69 N. C. 308.....	568
Dodd v. Bellows, 29 N. J. Eq. 127.....	73, 76
Dodd v. Hartford, 25 Conn. 232.....	648, 672
Dodds v. Gregory, 61 Miss. 351.....	100
Dodge v. Johnson, 32 Ind. App. 471, 67 N. E. 560.....	942
Dodge v. Lambert, 2 Bosw. 570.....	513
Dodge v. Lawson, 19 N. Y. Supp. 904, 22 Civ. Proc. R. 112....	80, 83, 86
Dodge v. Pyrolusite Manganese Co., 69 Ga. 665.....	227
Dodge v. Williams, 107 Ga. 410, 33 S. E. 468.....	1096
Dodge v. Woolsey, 18 How. (59 U. S.) 331, 15 L. ed. 401.....	547, 660, 661
Dodge Stationery Co. v. Dodge, 145 Cal. 380, 78 Pac. 879..	527, 998
Dodson v. Hays, 29 W. Va. 577, 2 S. E. 415.....	1522
Doe v. Northwest Coal & Transportation Co., 64 Fed. 928.....	227
Doggett v. Hart, 5 Fla. 215, 58 Am. Dec. 464.....	1173
Doherty v. Allman, L. R. 3 App. C. 709.....	514, 807
Doherty v. Holliday, 137 Ind. 282, 32 N. E. 315, 36 N. E. 907..	1449
Dohnert's Appeal, 64 Pa. St. 311.....	80, 81, 99
Dole v. Warren, 32 Me. 94, 52 Am. Dec. 640.....	1488
Dollahon v. Whittaker, 187 Ill. 84, 58 N. E. 301.....	680
Dollins v. Lindsay, 89 Ala. 217, 7 South. 234.....	201
Doloret v. Rothschild, 1 Sim. & St. 590.....	1257
Dolton v. Dolton, 201 Ill. 465, 66 N. E. 323.....	1123
Domschke v. Metropolitan El. R. Co., 148 N. Y. 343, 42 N. E. 804.....	780
Donahue v. Meister, 88 Cal. 121, 22 Am. St. Rep. 283, 25 Pac. 1096..	1243, 1244
Donald v. American S. & R. Co., 62 N. J. Eq. 729, 48 Atl. 771, 1116.....	542
Donaldson v. Jacobitz, 67 Kan. 244, 72 Pac. 846.....	54
Donaldsonville v. Police Jury, 113 La. 16, 36 South. 873.....	701
Doner v. Stauffer, 1 Penr. & W. 198.....	1536
Doniol v. Commercial Fire Ins. Co., 34 N. J. Eq. 40.....	1140
Donnell v. Bennett, L. R. 22 Ch. D. 835.....	498, 529
Donnell v. Matteer, 7 Ired. Eq. 94.....	1182, 1190
Donnor v. Quartermas, 90 Ala. 164, 24 Am. St. Rep. 778, 8 South. 715.....	1211

Donovan v. Allert , 11 N. D. 289, 95 Am. St. Rep. 720, 91 N. W. 441, 58 L. R. A. 775.....	772, 783, 835
Donovan v. Finn , 1 Hopk. Ch. 59, 74, 14 Am. Dec. 531.....	1415, 1416
Dooley v. Stringham , 4 Utah, 107, 7 Pac. 405	811
Doolittle , In re, 23 Fed. 544.....	303, 322, 1031
Doolittle v. Dwight , 2 Met. (Mass.) 561.....	1479
Doolittle v. Supervisors , 18 N. Y. 155.....	618
Doonan v. Board of Education , 9 W. Va. 246.....	647, 748
Dopp v. Doll , 13 Wkly. L. Bul. 355.....	1056
Doran v. Barnes , 54 Kan. 238, 38 Pac. 300.....	697
Doremus v. Hennessy (1892), 176 Ill. 608, 68 Am. St. Rep. 203, 52 N. E. 924, 54 N. E. 524, 43 L. R. A. 797....	1013, 1017, 1029
Doremus v. Mayor etc. Paterson (N. J. Ch.), 55 Atl. 304, 57 Atl. 548.....	965
Dority v. Dority (Tex.), 71 S. W. 950.....	493
Dorman v. Dorman , 187 Ill. 154, 79 Am. St. Rep. 210, 58 N. E. 235.....	1208
Dormer v. Fortescue , 3 Atk. 124, 130.....	1168, 1169
Dorn v. Fox , 61 N. Y. 264.....	65, 68, 69, 75
Dorothy v. Pierce , 27 Or. 373, 41 Pac. 668.....	624
Dorr v. Shaw , 4 Johns. Ch. 17.....	1402
Dorsey v. Allen , 85 N. C. 358, 39 Am. Rep. 704.....	889
Dorsey v. Sibert , 93 Ala. 312, 9 South. 288.....	348
Dorsey Harvester Revolving-Rake Co. v. Marsh , 6 Fish. Pat. Cas. 387, Fed. Cas. No. 4014.....	980
Dosoris Pond Co. v. Campbell , 164 N. Y. 596, 58 N. E. 1087, affirming 25 App. Div. 179, 50 N. Y. Supp. 819.....	831
Doty v. Martin , 32 Mich. 462... ..	524
Doty's Admrs. v. Doty's Guardian , 26 Ky. Law Rep. 63, 80 S. W. 803.....	1354
Doubleday v. Newton , 9 How. Pr. 72.....	1214
Dougherty v. McDougald , 10 Ga. 121.....	164
Douglas v. Fargo (N. D.), 101 N. W. 919.....	726
Douglas County v. Stone , 110 Fed. 812.....	656
Douglass , Appeal of, 118 Pa. St. 65, 12 Atl. 834.....	1004
Douglass v. Cline , 12 Bush. 608.....	167, 417
Douglass v. Nuzum , 16 Kan. 515.....	1246
Douglass v. Todd , 96 Cal. 655, 31 Am. St. Rep. 247, 31 Pac. 623.....	1109
Douglass v. Harrisville , 9 W. Va. 162, 27 Am. Rep. 548....	747, 749
Douler v. Campbell , 178 Pa. St. 23, 35 Atl. 857.....	1519
Dow v. Memphis & L. R. R. Co. , 20 Fed. 260.....	255, 337
Dowell v. Goodwin , 22 R. I. 287, 84 Am. St. Rep. 842, 47 Atl. 693, 51 L. R. A. 873.....	1113
Dowling v. Betjemann , 2 Johns. & H. 544.....	1265
Downer v. Baxter , 30 Vt. 467.....	1479
Downin v. Sprecher , 35 Md. 478.....	1207
Downing , In re, 1 Dill. 33, Fed. Cas. No. 4044.....	1537
Downing v. Corcoran (Mo. App.), 87 S. W. 114.....	940
Downing v. Dinwiddie , 132 Mo. 92, 33 S. W. 470.....	859, 963
Downing v. Lewis , 56 Neb. 386, 76 N. W. 900.....	523
Downing v. Ross , 1 App. D. C. 251	606, 611, 626
Downing v. Wherrin , 19 N. H. 91, 49 Am. Dec. 139	1226
Downs v. Bennett , 63 Kan. 653, 88 Am. St. Rep. 256, 66 Pac. 623, 55 L. R. A. 560	1051
Downs v. Wyandotte Co. Commissioners , 48 Kan. 640, 29 Pac. 1077.....	697

Downshire v. Sandys, 6 Ves. 107.....	813
Dows v. Chicago, 11 Wall. 108, 20 L. ed. 65	643, 655, 656
Dowson v. Solomon, 1 Drew. & S. 1	1320
Doyle v. Metropolitan El. Co., 136 N. Y. 505, 32 N. E. 1008....	779
Doyle v. Sleeper, 1 Dana, 531, 534, 535, 558, 562.....	1415
Dozier v. Logan, 101 Ga. 173, 28 S. E. 612	114, 161
Dozier v. Matson, 94 Mo. 328, 4 Am. St. Rep. 388, 7 S. W. 268..	1360
Drake v. Hudson R. R. Co., 7 Barb. 508	777, 890
Drake v. Merkle, 153 Ill. 318, 38 N. E. 654	1187, 1195
Drake v. Phillips, 40 Ill. 388	680
Drake v. Wild, 65 Vt. 611, 27 Atl. 427	487
Drake v. Wild, 70 Vt. 52, 39 Atl. 248	36
Drakeford v. Adams, 98 Ga. 722, 25 S. E. 833	303, 304
Drake Medicine Co. v. Glessner, 68 Ohio St. 337, 67 N. E. 722..	996
Draper v. Skerrett, 116 Fed. 206	994
Dreiske v. Eisendrath Co., 214 Ill. 199, 73 N. E. 379	1287
Drennen v. Alabama Nat. Bank, 117 Ala. 320, 23 South. 71....	1413
Drennen v. Mercantile Tr. & D. Co., 115 Ala. 592, 67 Am. St. Rep. 72, 23 South. 164, 39 L. R. A. 623	415
Drewry v. Wood, 127 Fed. 887	994
Dresel v. Jordan, 104 Mass. 407, 416	1296, 1329, 1330
Drew v. Clemmons, 2 Jones Eq. 314	1197
Drewe v. Corp, 9 Ves. 368	1365, 1366
Drewe v. Hanson, 6 Ves. 673, 675, 679	1363, 1364, 1365
Dreyfus v. Casey, 52 Hun, 95, 5 N. Y. Supp. 65	68
Driggs & Co.'s Bank v. Norwood, 49 Ark. 136, 4 Am. St. Rep. 30, 4 S. W. 448	1128
Driscoll v. Smith, 184 Mass. 221, 68 N. E. 211	940
Drucker v. Manhattan R. Co., 106 N. Y. 157, 60 Am. Rep. 437, 12 N. E. 568	781
Drury v. Molins, 6 Ves. 328	513
Drury v. Roberts, 2 Md. Ch. 157	147
Du Bois v. Clark, 12 Colo. App. 220, 55 Pac. 750	1117
Du Bois v. Union Dime Sav. Inst., 89 Hun, 382, 35 N. Y. Supp. 397, 25 Civ. Proc. R. 288, 2 N. Y. Ann. Cas. 221.....	72, 82, 101
Dubos v. Dreyfous, 52 La. Ann. 1117, 27 South. 663	895
Dubowski v. Goldstein, [1896] 1 Q. B. 478	527
Dubuque etc. R. R. Co. v. Cedar Falls etc. R. Co., 76 Iowa, 702, 39 N. W. 691	
Duck v. Peeler, 74 Tex. 272, 11 S. W. 1111	741
Duckworth v. Duckworth's Admr., 35 Ala. 70	1075
Dudley v. James, 83 Fed. 345	594
Duecker v. Gocres, 104 Wis. 29, 80 N. W. 91	1148
Duesler v. Johnstown, 24 App. Div. 608, 48 N. Y. Supp. 683..	909, 968
Duff v. Hopkins, 33 Fed. 599, 607	1354
Duff Mfg. Co. v. Norton, 92 Fed. 921	982
Duff v. Russell, 133 N. Y. 678, 31 N. E. 622, affirming 41 N. Y. St. Rep. 955, 16 N. Y. Supp. 958	497, 520
Duff v. Russell, 60 N. Y. Super. Ct. (28 Jones & S.) 80, 39 N. Y. St. Rep. 266, 14 N. Y. Supp. 134	497, 520
Duffy v. O'Donovan, 46 N. Y. 22	1332
Dugger v. Collins, 69 Ala. 324	309, 310, 311, 314
Dugger v. Tutwiler, 129 Ala. 258, 30 South. 91	1531, 1533
Duke v. Hague, 107 Pa. St. 57.....	1187, 1196, 1203
Duke v. State, 56 Ark. 485, 20 S. W. 600	40
Duke of Beaufort v. Berty, 1 P. Wms. 703	138

Duke of Bedford v. Trustees British Museum, 2 Mylne & K. 552.	508
Duke of Bolton v. Williams, 4 Brown Ch. 297	70
Duke of Leeds v. Earl of Strafford, 4 Ves. 180.	1176, 1177
Duke of Queensbury v. Shebbeare, 2 Eden, 329	987
Duke of Somerset v. Cookson, 3 P. Wms. 389	1263
Dulaney v. Scudder, 94 Fed. 6, 36 C. C. A. 52	492
Dull, Appeal of, 113 Pa. St. 510, 6 Atl. 540	1226, 1232
Dull v. Blackman, 169 U. S. 243, 18 Sup. Ct. 333, 42 L. ed. 733.	25
Dulo v. Miller, 112 Ala. 687, 20 South. 981	1139
Dumars v. City of Denver, 16 Colo. App. 375, 65 Pac. 580.	647, 670, 671, 672
Dumont v. Dufore, 27 Ind. 263	1251
Dun v. International Mercantile Agency, 127 Fed. 173	986
Dunbar v. Board of Commissioners, 5 Idaho, 407, 49 Pac. 409.	624
Dunbar v. Green (Kan.), 72 Pac. 243	40, 44
Duncan v. Cashin, L. R. 10 Com. P. 554	71
Duncan v. Central Passenger Ry. Co., 85 Ky. 425, 4 S. W. 228.	504
Duncan v. George C. Treadwell Co., 82 Hun, 376, 31 N. Y. Supp. 340	435
Duncan v. Gerdine, 59 Miss. 550	1113
Duncan v. Hayes, 22 N. J. Eq.	871, 880, 919
Dunckel v. Dunckel, 141 N. Y. 427, 36 N. E. 405	1351
Duncombe v. Felt, 81 Mich. 332, 45 N. W. 1004, 1006.	812, 813, 814
Duncuft v. Albrecht, 12 Sim. 189.	1269
Dundas v. Dutens, 1 Ves. Jr. 196, 198, 2 Cox, 240.	1415
Dundee Mortgage Trust Inv. Co. v. Charlton, 13 Saw. 25, 32 Fed. 192	655
Dundee Mortgage Trust Inv. Co. v. Parrish, 24 Fed. 197.	662
Dunderdale v. Westinghouse Electric Co., 51 Ill. App. 407	1436
Dungey v. Angove, 2 Ves. 304.	90, 1143
Dunham v. Byrnes, 36 Minn. 106, 30 N. W. 402	376
Dunham v. Cox, 10 N. J. Eq. (2 Stockt.) 437, 64 Am. Dec. 460	1411, 1434
Dunklin County v. Choteau, 120 Mo. 577, 25 S. W. 553.	41, 51
Dunlap v. Byers, 110 Mich. 109, 67 N. W. 1067	30, 450
Dunlap v. Hedges, 35 W. Va. 287, 13 S. E. 656.	187
Dunlap v. James, 174 N. Y. 411, 67 N. E. 60.	1498
Dunlap v. Steere, 92 Cal. 344, 27 Am. St. Rep. 143, 28 Pac. 563, 16 L. R. A. 361	1105
• Dunlap's Cable News Co. v. Stone, 60 Hun, 583, 15 N. Y. Supp. 2	1050
Dunn v. Columbia Nat. Bank, 204 Pa. St. 53, 53 Atl. 519.	34
Dunn v. Sparks, 1 Ind. 397, 50 Am. Dec. 473	1488
Dunn v. Yakish, 10 Okla. 388, 61 Pac. 926.	1390
Dunnaway v. O'Reilly (Mo. App.), 79 S. W. 1004	567
Dunne v. Light, 8 De Gex, M. & G. 774, 778	1314
Dunne v. Portland St. Ry. Co., 40 Or. 295, 65 Pac. 1052	1439
Dunning v. Bates, 186 Mass. 123, 71 N. E. 309	61
Dunsmuir v. Port Angeles Gas etc. Co., 30 Wash. 586, 71 Pac. 9.	1512
Dunson v. Spradley (Tex. Civ. App.), 40 S. W. 327.	1135
Du Pont v. Du Bos, 52 S. C. 244, 29 S. E. 665	1161, 1162, 1184
Du Pre v. Williams, 5 Jones Eq. 96	804
Du Puy v. Transportation etc. Co., 82 Md. 408, 33 Atl. 889, 34 Atl. 910	218
Durand v. Gray, 129 Ill. 9, 129 N. E. 610	1436
Durant v. Crowell, 97 N. C. 367, 2 S. E. 541	167

Durant v. Einstein, 5 Rob. (N. Y.) 423	1517
Durbin v. Kuney, 19 Or. 71, 23 Pac. 661	1490
Durell v. Pritchard, L. R. 1 Ch. App. 244.....	955
Durham v. Legard, 34 Beav. 611	1368
Durham v. Linderman, 10 Okla. 570, 64 Pac. 15	730
Duryee v. United States Credit System Co., 55 N. J. Eq. 311, 37 Atl. 155	289, 291
Dushane v. Beall, 161 U. S. 516, 16 Sup. Ct. 367, 40 L. ed. 791..	391
Dussol v. Bruguere, 50 Cal. 456	1482
Dutcher v. Hobby, 86 Ga. 198, 22 Am. St. Rep. 444, 12 S. E. 356, 10 L. R. A. 472	1501, 1510
Dutton v. Citizens' Nat. Bank, 53 Kan. 440, 36 Pac. 719	694
Dutton v. Thomas, 97 Mich. 93, 56 N. W. 229	108, 188, 193, 1413
Du Val v. Marshall, 30 Ark. 230	165
Duvall v. Waters, 1 Bland (Md.), 569, 18 Am. Dec. 350.....	
.....	803, 806, 811, 843, 845
Dwight v. Hamilton, 113 Mass. 175 ..	497, 526
Dwight v. Hayes, 150 Ill. 273, 41 Am. St. Rep. 360, 37 N. E. 218	869, 881, 909, 965
Dyckman v. Valiente, 42 N. Y. 549	1520, 1522
Dyer v. Baumeister, 87 Mo. 134	1246
Dyer's Co. v. King, L. R. 9 Eq. 438	952

E

Eaden v. Firth, 1 Hen. & M. 573	883
Eames v. Manley, 121 Mich. 300, 80 N. W. 15	45, 1432, 1435
Earl v. Duras, 13 Neb. 234, 13 N. W. 206	715, 716
Earl v. Halsey, 14 N. J. Eq. 332	1338
Earl v. Matheney, 60 Ind. 202	1119
Earl v. Raymond, 188 Ill. 15, 59 N. E. 19	676, 683
Earl v. Van Natta, 29 Ind. App. 532, 64 N. E. 901 ...	40, 1139, 1141
Earle v. Commonwealth, 178 U. S. 449, 20 Sup. Ct. 915, 44 L. ed. 1146	318
Earle v. Grove, 92 Mich. 285, 52 N. W. 615	1427
Earl of Aylesford v. Morris, L. R. 8 Ch. 484	1086
Earl of Clarendon v. Hordby, 1 P. Wms. 446.....	1210
Earl of Feversham v. Watson, Freem. Ch. 35.....	1327
Earl of Ripon v. Hobart, 3 Mylne & K. 169, Cooper temp. Brougham, 333	883, 887, 915, 917, 927, 929, 973
Early v. Friend, 16 Gratt. 21, 78 Am. Dec. 649 ...	1213, 1520, 1522
East & West India Dock Co. v. Littledale, 7 Hare, 57, 60....	67, 95
East & West R. Co. v. East Tennessee, V. & G. R. Co., 75 Ala. 280.	762
East Coast Cedar Co. v. People's Bank, 111 Fed. 446.....	1205
East India Co. v. Vincent, L. R. 35 Ch. D. 694.....	1359
East Line & Red River R. Co. v. State, 75 Tex. 434, 12 S. W. 690	245
Eastman v. Amoskeag etc. Co., 47 N. H. 71	880
Eastman v. Cain, 45 Neb. 48, 63 N. W. 127	178, 259
Eastman Co. v. Reichenbach, 20 N. Y. Supp. 110, 36 Cent. L. J. 433, 47 N. Y. St. Rep. 435	490
Easton Nat. Bank v. Am. Brick & Tile Co. (N. J. Ch. 1905), 60 Atl. 54	1466, 1471
East St. Louis Connecting R. Co. v. East St. Louis Union R. Co., 108 Ill. 265	768
East St. Louis Ry. Co. v. E. St. Louis, 182 Ill. 433, 439, 55 N. E. 533	1309, 1319

East Tenn. V. & G. R. Co. v. Atlanta etc. R. Co., 49 Fed. 608, 15 L. R. A. 109.....	326
East Tenn. Land Co. v. Leeson (Mass.), 57 N. E. 656.....	357
Eaton v. Eaton, 15 Wis. 259	1144
Eaton v. McCall, 86 Me. 346, 41 Am. St. Rep. 561, 29 Atl. 1103..	30
Eaton v. Schneider, 185 Ill. 508, 57 N. E. 421	1334, 1342, 1343
Eaton v. Whitaker, 18 Conn. 222, 44 Am. Dec. 586.....	1348
Eau Claire v. Matzke, 86 Wis. 291, 56 N. W. 874	913
Eayrs v. Nason, 54 Neb. 143, 74 N. W. 408	1247
Eberman v. Bartholomew, [1898] 1 Ch. 671	521
Ebert v. Langdale Co., 107 Wis. 569, 83 N. W. 942.....	631
Eberts v. Fisher, 54 Mich. 294, 20 N. W. 80..	1193
Echols v. Hubbard, 90 Ala. 309, 7 South. 817	1230, 1232
Ecclesiastical Commrs. v. Kino, L. R. 14 Ch. D. 213	941, 944, 959
Echelkamp v. Schroder, 45 Mo. 505	828, 839, 846, 849
Ecklund v. Willis, 42 Neb. 737, 60 N. W. 1026	183
Eckstein v. Downing, 64 N. H. 248, 10 Am. St. Rep. 404, 9 Atl. 626.	1262, 1269
Ecroyd v. Coggeshall, 21 R. I. 1, 71 Am. St. Rep. 241, 41 Atl. 260..	610
Eddy v. Lafayette, 49 Fed. 807, 1 C. C. A. 441; S. C., 163 U. S. 456, 16 Sup. Ct. 1082, 41 L. ed. 225	340
Eddy v. Omaha (Neb.), 101 N. W. 25	718
Eddy v. Traver, 6 Paige Ch. 521.....	1502
Edee v. Strunk, 35 Neb. 307, 53 N. W. 70	352, 361, 362
Edelsten v. Edelsten, 1 De Gex, J. & S. 185	990
Eden v. Firth, 1 H. & M. 573	917, 919
Edgell v. Clarke, 45 N. Y. Supp. 979, 19 App. Div. 199....	1126, 1127
Edgell v. Haywood, 3 Atk. 352	1415, 1447, 1452
Edgerton v. Peckham, 11 Paige Ch. 351, 356, 357	1337, 1340
Edison v. Edison, Jr., Chem. Co., 128 Fed. 957	1056
Edison v. Edison United Phonograph Co., 52 N. J. Eq. 620, 29 Atl. 195	222, 224
Edison Electric Light Co. v. Beacon Vacuum P. & E. Co., 54 Fed. 678	982, 983
Edison Mfg. Co. v. Gladstone (N. J. Eq.), 58 Atl. 391.....	995
Edison Storage Battery Co. v. Edison Automobile Co. (N. J. Eq.), 56 Atl. 861	998
Edmeston v. Lyde, 1 Paige, 637, 19 Am. Dec. 454. 1417, 1419, 1447, 1448	
Edmund's Exrs. v. Bruce, 88 Va. 1007, 14 S. E. 840.....	567
Edrington v. Pridham, 65 Tex. 612	303, 304
Edwards v. Allouez Min. Co., 38 Mich. 46, 31 Am. Rep. 301..	856, 902
Edwards v. Bay State Gas Co., 91 Fed. 942	213
Edwards v. Bennett, 10 Ired. (N. C.) 363	1186, 1199
Edwards v. Dykeman, 95 Ind. 509	1203
Edwards v. Edwards, 14 Tex. Civ. App. 87, 36 S. W. 1080....	139
Edwards v. Edwards, L. R. 2 Ch. D. 291	297, 298
Edwards v. Handley, 3 Ky. (Hard.) 602, 3 Am. Dec. 745.....	1124
Edwards v. Mercantile Trust Co., 124 Fed. 381	55
Edwards v. Milledgeville Water Co., 116 Ga. 201, 42 S. E. 417..	532
Edwards v. Norton, 55 Tex. 405	309, 314
Edwards v. Standard etc. Stock Syndicate, [1893] 1 Ch. 574..	166
Edward Thompson Co. v. American Law Book Co., 122 Fed. 923, 59 C. C. A. 148	985
Egbert v. Greenberg, 100 Fed. 447	986
Eggert v. Pratt (Iowa), 102 N. W. 786.....	1367
Ehlinger v. Rankin, 9 Tex. Civ. App. 424, 29 S. W. 240.....	590

Ehrenreich v. Froment, 54 App. Div. 196, 66 N. Y. Supp. 597..	840
Ehrmann v. Bartholomew, 67 L. J. Ch. 319, [1898] 1 Ch. 671, 78 L. J., N. S., 646, 46 Week. Rep. 509.....	528
Eichberg v. Wickham, 21 N. Y. Supp. 647	433
Eidemiller v. Wyandotte City, 2 Dill. 376, Fed. Cas. No. 4313..	764, 767
Eidlitz v. Lancaster, 40 App. Div. 446, 59 N. Y. Supp. 54.....	174
Eiffert v. Craps, 58 Fed. 470, 7 C. C. A. 319, 8 U. S. App. 436..	44, 54
Eilenbecker v. Dist. Ct. of Plymouth Co., 134 U. S. 31, 10 Sup. Ct. 424, 33 L. ed. 801	897
Eingartner v. Illinois Steel Co., 59 Am. St. Rep. 879, note	1125
Einstein v. Rosenfeld, 38 N. J. Eq. 309	222, 224
Einstein v. Schnebly, 89 Fed. 540, 552	145
Eisel v. Haves, 141 Ind. 41, 40 N. E. 119	523
Eisner v. Curiel, 20 Misc. Rep. 245, 45 N. Y. Supp. 1010	1196
Ela v. Ela, 158 Mass. 54, 32 N. E. 957	36
Elden v. Commonwealth, 55 Pa. St. 485	1497
Elder v. Richmond G. & S. M. Co., 19 U. S. App. 118, 58 Fed. 536, 7 C. C. A. 354	1118
Elder v. Whitesides, 72 Fed. 724	793, 1039, 1042
Elderkin v. Peterson, 8 Wash. 674, 36 Pac. 1089	361
Eldredge v. Palmer, 185 Ill. 618, 76 Am. St. Rep. 59, 57 N. E. 770	1162
Eldridge v. Eldridge, 14 N. J. Eq. 195	1169
Eldridge v. Smith, 34 Vt. 484	1227
Electric City Land & Imp. Co. v. West Ridge Coal Co., 187 Pa. St. 500, 41 Atl. 458 ...	504
Electric L. Co. v. Mobile & S. H. Ry. Co., 109 Ala. 190, 55 Am. St. Rep. 927, 19 South. 721	1279
Electric Secret-Service Co. v. Gill-Alexander El. M. Co., 125 Mo. 140, 28 S. W. 486	1268
Electric Storage Battery Co. v. Buffalo Elect. C. Co., 117 Fed. 314.	983
Elgin Nat. Watch Co. v. Loveland, 132 Fed. 41	996
Eliason v. Eliason, 3 Del. Ch. 260	1486
Elizabeth v. American Nicholson Pavement Co., 97 U. S. 126, 24 L. ed. 1000	977
Elizabethtown Gas-Light Co. v. Green, 46 N. J. Eq. 117, 18 Atl. 844; affirmed 49 N. J. Eq. 329, 24 Atl. 560	552, 1002
Elkhart Car Works v. Ellis, 113 Ind. 215, 15 N. E. 249....	334, 336
Eller v. Lacy, 137 Ind. 436, 36 N. E. 1088	1412
Ellett v. Newman, 92 N. C. 519, 523	110
Ellicott v. Warford, 4 Md. 85	107, 286, 433
Elliott v. Boyd, 40 Or. 326, 67 Pac. 202	803
Elliott v. Ferguson (Tex. Civ. App.), 83 S. W. 56.....	889
Elliott v. Nichols, 7 Gill (Md.), 85, 48 Am. Dec. 546	1487
Elliott v. Sibley, 101 Ala. 344, 13 South. 500	549, 550
Elliott v. Trahern, 35 W. Va. 634, 14 S. E. 223	354, 364
Ellis v. Blue Mountain Forest Assn., 69 N. H. 385, 41 Atl. 856, 42 L. R. A. 570	829
Ellis v. Boston H. & E. R. R. Co., 107 Mass. 1, 28.....	107
Ellis v. Bryant, 120 Ga. 890, 48 S. E. 352	1333, 1334
Ellis v. Cary, 74 Wis. 176, 17 Am. St. Rep. 125, 42 N. W. 252, 4 L. R. A. 55	1357
Ellis v. Duncan, 21 Barb. 230	971
Ellis v. Feist, 65 N. J. Eq. 548, 56 Atl. 369.....	1200
Ellis v. Kelley, 8 Bush, 621	1099
Ellis v. Southwestern Land Co., 108 Wis. 313, 81 Am. St. Rep. 909, 84 N. W. 417	1481

Ellis v. Vernon Ice, Light & Water Co. , 86 Tex. Supp. 109, 23 S. W. 858	288, 309, 315, 317, 319, 403, 410
Ellis v. Wren , 84 Ky. 254, 1 S. W. 440	833
Ellison v. Commissioners of Washington , 58 N. C. 37, 75 Am. Dec. 430	889
Elmhurst v. Spencer, E Maen. & G. 45.....	883
Elmira Iron & Steel R. M. Co. v. Erie Ry. Co. , 26 N. J. Eq. 284..	391
Elmore v. Spear , 27 Ga. 193, 73 Am. Dec. 729	1447
Elridge v. Hill , 2 Johns. Ch. 281	1087
Elrod v. Keller , 89 Ind. 382	1211, 1212
Elsbury v. Skull , 32 Ind. App. 556, 70 N. E. 287.....	1384
Else v. Kennedy , 67 Iowa, 376, 25 N. W. 290	1144
Elson v. O'Dowd , 40 Ind. 300	1136
Elting v. First Nat. Bk. , 173 Ill. 368, 50 N. E. 1095.....	165, 1097
Elwell v. Goodnow , 71 Minn. 383, 73 N. W. 1092, 1095.....	301
Elwood v. Bank , 41 Kan. 475, 21 Pac. 673	218, 261, 265, 266
Ely v. Crane , 37 N. J. Eq. 157	1519
Ely v. New Mexico & A. R. Co. , 129 U. S. 291, 9 Sup. Ct. 293, 32 L. ed. 688	1250, 1251
Ely v. Wilcox , 26 Wis. 91	1230
Elyria Gas & Water Co. v. City of Elyria , 57 Ohio St. 374, 49 N. E. 335	622
Emack v. Kane , 34 Fed. 46	1018, 1038, 1056, 1057
Emans v. Emans , 14 N. J. Eq. 114	1271
Emerie v. Alvarado , 90 Cal. 444, 27 Pac. 356	1211
Emerson, Appeal of , 95 Pa. St. 258	154
Emerson v. Shannon , 23 Colo. 274, 58 Am. St. Rep. 232, 47 Pac. 302	1223
Emerson v. Udall , 13 Vt. 477, 37 Am. Dec. 604	1077, 1109
Emery v. Wase , 8 Ves. 505, 514-517, 5 Ves. 846, 848.....	1273
Emigrant Mission Com. v. Brooklyn El. R. Co. , 20 App. Div. 596, 47 N. Y. Supp. 344	781
Emma Silver Min. Co. v. Emma Silver Min. Co. of New York , 7 Fed. 401	1160
Emmel v. Hayes , 102 Mo. 186, 22 Am. St. Rep. 769, 14 S. W. 209, 11 L. R. A. 323	1350
Emmons v. Davis & Dowd Pottery Co. (N. J. Ch.) , 16 Atl. 158..	402
Empire Hotel Co. v. Main , 98 Ga. 176, 25 S. E. 413.....	212
Endter v. Lennon , 46 Wis. 299, 50 N. W. 194.....	1082
Engberry v. Rousseau , 117 Wis. 52, 93 N. W. 824.....	1338
Engel v. Scheuerman , 40 Ga. 206, 2 Am. Rep. 573.....	1094, 1127
England v. Curling , 8 Beav. 129	1272
England v. Lewis , 25 Cal. 337	1227
England v. Russell , 71 Fed. 818	1426
Engleback v. Nixon , L. R. 10 Com. P. 645	71
English v. Aldrich , 132 Ind. 500, 32 Am. St. Rep. 270, 31 N. E. 456	1096, 1109
English v. English , 53 Kan. 173, 35 Pac. 1107	1200
English v. James , 108 Ga. 123, 34 S. E. 122	846
English v. People , 90 Ill. App. 54	261
English v. Progress etc. Co. , 95 Ala. 259, 10 South. 134.....	870, 871, 912, 916
English v. Smock , 34 Ind. 115, 7 Am. Rep. 215.....	601, 609, 623
Engstad v. Dinnie , 8 N. D. 1, 76 N. W. 292	613
Enoch Morgan's Sons Co. v. Troxell , 89 N. Y. 292, 42 Am. Rep. 294	991

Enoch Morgan's Sons Co. v. Whittier-Coburn Co., 118 Fed. 657..	994
Enos v. Stewart, 138 Cal. 112, 70 Pac. 1005	1144, 1145
Enslen v. Nathan, 136 Ala. 412, 34 South. 929	1464
Ensminger v. Peterson, 53 W. Va. 324, 44 S. E. 218.....	1290
Enterprise Mfg. Co. v. Landers, 124 Fed. 923	993, 995
Enterprise Mfg. Co. v. Landers, 131 Fed. 240, 65 C. C. A. 587..	993, 995
Enterprise Sav. Assn. v. Zumstein, 67 Fed. 1000, 15 C. C. A. 153, 37 U. S. App. 71	584
Entreken v. Howard, 16 Kan. 551.....	1251
Ephraim v. Pacific Bank, 129 Cal. 589, 62 Pac. 177.....	430, 431
Epperly v. Ferguson, 118 Iowa. 47, 91 N. W. 816.....	29
Eppinger v. Scott, 130 Cal. 275, 62 Pac. 460	1128
Epstein v. Ferst, 35 Fla. 498, 17 South. 414	1423
Epstein v. Webb (Tex. Civ. App.), 75 S. W. 337	589
Equitable Gas Light Co. v. Baltimore Coal Tar & Mfg. Co., 63 Md. 285	1263, 1265, 1362
Equitable Guarantee & T. Co. v. Donahoe (Del.), 45 Atl. 583..	647, 673
Equitable Life Assur. Soc. v. Brennan, 30 Abb. N. C. 260, 24 N. Y. Supp. 784	509
Equitable Mortgage Co. v. Lowe, 53 Kan. 39, 35 Pac. 829.....	1399
Equitable Trust Co. v. Garis, 190 Pa. St. 544, 70 Am. St. Rep. 644, 42 Atl. 1022, 44 Wkly. Not. Cas. 41	1265
Erb v. Morasch, 177 U. S. 584, 20 Sup. Ct. 819, 44 L. ed. 897..	338
Erb v. Popritz, 59 Kan. 264, 68 Am. St. Rep. 362, 52 Pac. 871.	351, 435
Erdmann v. Mitchell, 207 Pa. St. 79, 99 Am. St. Rep. 783, 56 Atl. 327	1013, 1016, 1019, 1024, 1039
Erhardt v. Boaro, 113 U. S. 537, 5 Sup. Ct. 565, 28 L. ed. 1116.	825, 843
Erickson v. First Nat. Bank, 44 Neb. 622, 48 Am. St. Rep. 753, 62 N. W. 1078, 28 L. R. A. 577.....	1154, 1155
Erie Ry. Co. v. Delaware, L. & W. R. Co., 21 N. J. Eq. 283....	788
Erie Ry. Co. v. Ramsey, 45 N. Y. 641	1082
Erin Tp. v. Detroit & E. Plank Road Co., 115 Mich. 465, 73 N. W. 556	544
Ernest v. Merritt, 107 Ga. 61, 32 S. E. 898	1410
Ernst v. Elmira Municipal Improvement Co., 24 Misc. Rep. 533, 54 N. Y. Supp. 116	550
Erskine v. Forest Oil Co., 80 Fed. 583	825
Ertz v. Produce Exchange, 79 Minn. 140, 79 Am. St. Rep. 433, 81 N. W. 737, 48 L. R. A. 90.....	1018, 1048
Erwin v. Central Union Tel. Co., 148 Ind. 365, 46 N. E. 667, 47 N. E. 663	783
Erwin v. Fulk, 94 Ind. 235	764, 828
Eseourt v. Eseourt etc. Co., L. R. 10 Ch. App. 276.....	991
Eslava v. Crampton, 61 Ala. 507	171
Espuela Land etc. Co. v. Bindle, 5 Tex. Civ. App. 18, 23 S. W. 819.....	246
Essex v. Day, 52 Conn. 483	1141
Essex County Nat. Bank v. Harrison, 57 N. J. Eq. 91, 40 Atl. 209	1232
Essig v. Lower, 120 Ind. 239, 21 N. E. 1090	1250
Esson v. Wattier, 25 Or. 7, 34 Pac. 756	973
Estell v. Knight, 117 Wis. 540, 94 N. W. 290	629
Esterbrook v. O'Brien, 98 Cal. 671, 33 Pac. 765	670
Estes v. Timmons, 12 Okla. 537, 73 Pac. 303	1103
Etheridge Furniture Co., In re, 92 Fed. 329	256
Etowah Min. Co. v. Wills Valley Min. & Mfg. Co., 106 Ala. 492, 17 South. 522	116, 162, 277, 282

Ettlinger v. Persian R. & C. Co., 66 Hun, 94, 20 N. Y. Supp. 772..	260
Eufaula Bank v. Pruett, 128 Ala. 478, 30 South. 731	1225
Eureka & K. R. R. Co. v. Cal. & N. Ry. Co., 103 Fed. 897, 902..	768
Eureka Fire Hose Co. v. Eureka Rubber Mfg. Co. (N. J. Eq.), 60 Atl. 561	998
Evans, Ex parte, L. R. 13 Ch. D. 252	294, 297
Evans v. Bagshaw, L. R. 5 Ch. App. 340, 39 L. J. Ch. D. 145..	1186
Evans v. Bagshaw, L. R. 8 Eq. 469, L. R. 5 Ch. 340....	1183, 1194
Evans v. Bremridge, 8 De Gex, M. & G. 100.....	1086
Evans v. Hudson St. Commrs., 84 Hun, 206, 32 N. Y. Supp. 547..	619
Evans v. Laughton, 69 Wis. 138, 33 N. W. 573	1430
Evans v. New Auditorium Pier Co. (N. J. Eq.), 58 Atl. 191....	502
Evans v. Pease, 21 R. I. 187, 42 Atl. 506.....	358, 451
Evans v. Reading etc. Fertilizing Co., 160 Pa. St. 209, 20 Atl. 702	905, 906, 907, 918
Evans v. Taylor, 28 W. Va. 184	1076
Evans v. Welch, 63 Ala. 256	1425
Evans v. Woodsworth, 213 Ill. 404, 72 N. E. 1082.....	1103
Evelyn v. Lewis, 3 Hare, 472	302, 305, 333
Everett v. Marquette, 53 Mich. 450, 19 N. W. 140	828
Everett v. Neff, 28 Md. 176	297
Everett v. State, 28 Md. 190	356
Everett v. Tabor, 119 Ga. 128, 46 S. E. 72	1099
Everly v. Driskill, 24 Tex. Civ. App. 413, 58 S. W. 1046.....	943
Eversole v. Cook, 92 Ind. 222.....	687
Evertson v. Booth, 19 Johns. 486, 492	1399, 1400
Ewald v. Corbett, 32 Cal. 499	1203
Ewell v. Greenwood, 26 Iowa, 377	930
Ewer v. Hobbs, 5 Met. 6	1195
Ewertsen v. Gerstenberg, 186 Ill. 344, 57 N. E. 1051, 51 L. R. A. 310.....	508, 509
Ewing v. Crouse, 6 Ind. 312.....	1342
Ewing v. Johnston, L. R. 13 Ch. Div. 434, 7 App. Cas. (H. L.) 219	990
Ewing v. King, 169 Mass. 97, 47 N. E. 597	359
Ewing v. Orr Ewing, L. R. 9 App. Cas. 34, 40.....	29
Ewins v. Gordon, 49 N. H. 444	1259, 1341
Exchange Tel. Co., Ltd., v. Central News, Ltd., [1897] 2 Ch. 48..	531
Ex-Mission Land & Water Co. v. Flash, 97 Cal. 610, 32 Pac. 600.....	40, 1124
Express Co. v. Railroad Co., 99 U. S. 191, 25 L. ed. 319.....	384
Expressman's Mut. Benef. Assn. v. Hurlock, 91 Md. 585, 80 Am. St. Rep. 470, 46 Atl. 957	66
Eyre v. Eyre, 19 N. J. Eq. 102	1359

F

Fabrice v. Von der Brelie, 190 Ill. 460, 60 N. E. 835.....	1158
Fahie v. Lindsay, 8 Or. 474	92, 97
Fahy v. Johnstone, 21 App. Div. 154, 47 N. Y. Supp. 402.....	591
Failey v. Fee, 83 Md. 83, 55 Am. St. Rep. 326, 34 Atl. 839, 32 L. ed. 311	445
Failey v. Talbee, 55 Fed. 892	448
Faine v. Brown, 2 Ves. Sr. 307, cited	1315, 1320
Fairbairn v. Fisher, 4 Jones Eq. 390	164
Fairbank v. Cudworth, 33 Wis. 358	816
Fairbanks v. Belknap, 135 Mass. 179	70, 78

Fairbanks v. Farwell, 141 Ill. 354, 30 N. E. 1056	374
Fairbanks v. Welshans, 55 Neb. 362, 75 N. W. 865	1424
Fairburn v. Pearson, 2 Maen. & G. 144.....	143
Fairchild v. Mullan, 90 Cal. 190, 27 Pac. 201	1382, 1393
Fairecloth v. Carroll, 137 Ala. 243, 34 South. 182	1192, 1195
Faires v. Cockerell, 88 Tex. 428, 31 S. W. 190, 639, 28 L. R. A. 528	1490
Fairfield Floral Co. v. Bradbury, 87 Fed. 415	575
Faison v. Hardy, 114 N. C. 58, 19 S. E. 91.....	569
Faivre v. Gillman, 84 Iowa, 573, 51 N. W. 46.....	1424
Faivre v. Union Dime Sav. Inst., 59 N. Y. Super. Ct. (27 J. & S.) 558, 13 N. Y. Supp. 423	100
Fajder v. Village of Aitkin, 87 Minn. 445, 92 N. W. 332, 934... 708	
Falcø v. Gray, 4 Drew. 651	1264
Falcke v. Gray, 28 L. J. Ch. 28, 31.....	1307
Falconer v. Freeman, 4 Sandf. Ch. 565	1430
Falk v. Jones, 49 N. J. Eq. 484, 23 Atl. 813.....	443
Falkenbach v. Patterson, 43 Ohio St. 359, 1 N. E. 757.....	366
Falker v. Linehan, 88 Iowa, 641, 55 N. W. 503.....	1435
Falkinburg v. Lucy, 35 Cal. 52, 95 Am. Dec. 76.....	991
Fall v. Elkins, 9 Week. Rep. 861	1195
Fall & Sockeye Fish Co. v. Point Roberts F. & C. Co., 24 Wash. 630, 64 Pac. 792 ...	401
Falley v. Gribling, 128 Ind. 110, 22 N. E. 723, 26 N. E. 794... 1485	
Fallon v. Egbert's Woolen Mills Co., 31 Misc. Rep. 523, 64 N. Y. Supp. 466, 56 App. Div. 585, 67 N. Y. Supp. 347.....	344
Falloon v. Schilling, 29 Kan. 292, 44 Am. Rep. 642.....	902
Falls Village etc. Co. v. Tibbetts, 31 Conn. 165	881
Falmouth Bank v. Cape Cod Ship Canal Co., 166 Mass. 550, 44 N. E. 617	205, 227
Fame Ins. Co.'s Appeal, 83 Pa. St. 396	1490
Fanning v. Chadwick, 20 Mass. 420, 15 Am. Dec. 233.....	1515
Fargo v. Arthur, 43 How. Pr. 193	74
Fargo v. Hart, 193 U. S. 490, 24 Sup. Ct. 498, 48 L. ed. 761....	662
Fargo v. New York & N. E. R. Co., 3 Misc. Rep. 205, 23 N. Y. Supp. 360	1279
Fargusson v. Talcott, 7 N. D. 183, 73 N. W. 207	1341
Farina v. Silverlock, 6 De Gex, M. & G. 214, 217	989
Faris v. Durham, 21 Ky. (5 T. B. Mon.) 397, 17 Am. Dec. 77.. 1428	
Faris v. Dudley, 78 Ala. 277, 56 Am. Rep. 24	941
Faris v. Reynolds, 70 Ind. 359.....	688
Farlee v. Field (N. J. Eq.), 36 Atl. 945	1507
Farley v. Blood, 30 N. H. 354.....65, 67, 69, 70, 92, 94, 96, 97	
Farley v. Moog, 79 Ala. 148, 58 Am. Rep. 585.....	1530
Farley v. Vaughn, 11 Cal. 235, 238.....	1337
Farmer v. City of St. Paul, 65 Minn. 176, 67 N. W. 990, 33 L. R. A. 199	631
Farmers' & Drovers' Bank v. Sherley, 12 Bush (Ky.), 304	1504
Farmers' & Mech. Bank v. Polk, 1 Del. Ch. 167.....	1518
Farmers' & Merchants' Bank v. German Nat. Bank, 59 Neb. 229, 80 N. W. 820.....	262, 265
Farmers' & Merchants' Nat. Bank v. Waco Electric Ry. & Lt. Co. (Tex. Civ. App.), 36 S. W. 131.....	415
Farmers' & Shippers' L. T. Warehouse Co. v. Pridemore (W. Va.), 47 S. E. 258	1103
Farmers' Bank v. Beaston, 7 Gill & J. 421, 28 Am. Dec. 226....	297

Farmers' Loan etc. Co. v. Bankers & M. Tel. Co. , 148 N. Y. 315, 51 Am. St. Rep. 690, 42 N. E. 707, 31 L. R. A. 403....	403, 447
Farmers' Loan etc. Co. v. Cape Fear & G. V. R. Co. , 62 Fed. 675	276, 284
Farmers' Loan etc. Co. v. Central R. R. Co. of Iowa , 7 Fed. 537, 2 McCrary, 181	350
Farmers' Loan etc. Co. v. Chicago & A. R. Co. , 27 Fed. 146....	250
Farmers' Loan etc. Co. v. Chicago & N. P. R. Co. , 118 Fed. 204..	339
Farmers' Loan etc. Co. v. Detroit etc. R. R. Co. , 71 Fed. 29....	424
Farmers' Loan etc. Co. v. Eaton , 114 Fed. 14, 51 C. C. A. 640..	399
Farmers' L. etc. Co. v. Galesburg , 133 U. S. 156, 10 Sup. Ct. 316, 33 L. ed. 373	1157
Farmers' Loan etc. Co. v. Grape Creek Coal Co. , 50 Fed. 481	403, 415
Farmers' Loan etc. Co. v. Green Bay etc. R. Co. , 45 Fed. 664..	424
Farmers' Loan etc. Co. v. Kansas City, W. & N. W. R. Co. , 53 Fed. 182.....	248, 414, 415, 416
Farmers' Loan etc. Co. v. Lake Street Elevated R. R. Co. , 177 U. S. 51, 20 Sup. Ct. 564, 44 L. ed. 667.....	325, 326, 1081
Farmers' Loan etc. Co. v. Minneapolis etc. Works , 35 Minn. 543, 29 N. W. 349	372, 373, 375
Farmers' Loan etc. Co. v. Nestille , 25 C. C. A. 194, 79 Fed. 748..	424
Farmers' Loan etc. Co. v. Northern Pac. R. R. Co. (1894), 60 Fed. 803	1041
Farmers' Loan etc. Co. v. Northern Pac. R. R. , 72 Fed. 26....	451
Farmers' Loan etc. Co. v. Northern Pac. R. Co. , 74 Fed. 431....	424
Farmers' Loan etc. Co. v. Northern Pac. Ry. Co. , 79 Fed. 227, 24 C. C. A. 511.....	424
Farmers' Loan etc. Co. v. Northern Pac. R. Co. , 120 Fed. 873..	393
Farmers' Loan etc. Co. v. Oregon Pac. R. Co. , 31 Or. 237, 65 Am. St. Rep. 822, 48 Pac. 706, 38 L. R. A. 424.....	431
Farmers' Loan etc. Co. v. Postal Tel. Co. , 55 Conn. 334, 5 Am. St. Rep. 53, 11 Atl. 184.....	31
Farmers' Loan etc. Co. v. Sioux Falls , 131 Fed. 890.....	528
Farmers' L. etc. Co. v. Suydam (Neb.) , 95 N. W. 867.....	1139
Farmers' Loan etc. Co. v. Vicksburg & M. R. Co. , 33 Fed. 778...	417
Farmers' Loan etc. Co. v. Winona & S. W. Ry. Co. , 59 Fed. 960	251, 252
Farmers' Nat. Bank v. Backus , 74 Minn. 264, 77 N. W. 142.....	430
Farmers' R. Co. v. Reno O. C. & P. Ry. Co. , 53 Pa. St. 224.....	484
Farmers' Savings etc. Assn. v. Kent , 117 Ala. 624, 23 South. 757..	569
Farmington Village Corp. v. Sandy R. Nat. Bank , 85 Me. 46, 26 Atl. 965.....	1156
Farnham v. Campbell , 34 N. Y. 480.....	1235
Farnim Co. Bank v. Lowenstein (Tex. Civ. App.) , 54 S. W. 316..	1130
Farr v. Detroit (Mich.) , 99 N. W. 19.....	707
Farr v. Hauenstein (N. J. Eq.) , 61 Atl. 147.....	41
Farr v. Scott (Pa.) , 4 Brewst. 49.....	1293
Farrant v. Lovell , 3 Atk. 723.....	801, 818
Farrar v. Bernheim , 74 Fed. 435, 20 C. C. A. 496, 41 U. S. App. 172.....	1441
Farrar v. Bernheim , 75 Fed. 136, 21 C. C. A. 264.....	1437
Farrar v. Nash , 35 Beav. 171.....	1330
Farrell v. Cook , 16 Neb. 483, 49 Am. Rep. 721, 20 N. W. 720..	872
Farrell v. New York Steam Co. , 23 Misc. Rep. 726, 53 N. Y. Supp. 55.....	894

Farrington v. New England Investment Co. , 1 N. D. 102, 45 N. W. 191.....	726
Farson v. Fogg , 205 Ill. 326, 68 N. E. 755.....	1272, 1273
Farthing v. Rochelle , 131 N. C. 563, 43 S. E. 1.....	1289
Farwell v. Becker , 129 Ill. 261, 16 Am. St. Rep. 267, 21 N. E. 792, 6 L. R. A. 400.....	1484
Farwell v. Bigelow , 112 Mich. 289, 70 N. W. 579....	1398, 1400, 1401
Farwell v. Cotting , 8 Allen, 211.....	1169, 1170
Farwell v. Home Ins. Co. (C. C. A.) , 136 Fed. 93.....	1145, 1148
Farwell v. Huston , 151 Ill. 239, 42 Am. St. Rep. 237, 37 N. E. 864.....	1536
Farwell v. Johnston , 34 Mich. 342.....	1359
Faulkenbury v. Wells , 28 Tex. Civ. App. 621, 68 S. W. 327.....	923
Faulkner v. Davis , 18 Gratt. 651, 98 Am. Dec. 698.....	1207
Faulkner v. Hyman , 142 Mass. 53.....	447
Favorite v. Deardoff , 84 Ind. 555.....	182
Fawcett v. Fawcett , 85 Wis. 332, 39 Am. St. Rep. 844, 55 N. W. 405.....	57, 58
Fawcett v. Order of Iron Hall , 64 Conn. 170, 29 Atl. 614, 24 L. R. A. 815.....	455
Fealey v. Fealey , 104 Cal. 354, 43 Am. St. Rep. 111, 38 Pac. 49.....	1105
Fears v. State , 102 Ga. 274, 29 S. E. 463.....	897
Featherstone v. Cooke , L. R. 16 Eq. 298.....	222, 224, 225
Featherstonhaugh v. Fenwick , 17 Ves. 298.....	1534
Fechheimer v. Baum , 37 Fed. 167, 2 L. R. A. 153.....	202
Feckheimer v. Nat. Exch. Bank , 79 Va. 80.....	1396
Federal Oil Co. v. Western Oil Co. , 112 Fed. 373.....	1310
Federal Oil Co. v. Western Oil Co. , 121 Fed. 674, 57 C. C. A. 428.....	1298, 1310
Fehlberg v. Cosine , 16 R. I. 162, 13 Atl. 110.....	1141
Feilden v. Slater , L. R. 7 Eq. 523.....	517
Fejervary v. Langer , 9 Iowa, 159.....	1249
Feldenheimer v. Pressel , 6 Dak. 265, 43 N. W. 94.....	1408, 1409
Felix v. Patrick , 145 U. S. 317, 12 Sup. Ct. 862, 36 L. ed. 719 (affirming 36 Fed. 457).....	47, 54
Fellows v. City of New Haven , 44 Conn. 240, 26 Am. St. Rep. 447.....	782
Fells v. Read , 3 Ves. 70.....	1264
Felsenthal v. Johnson , 104 Ill. 21.....	683
Felt v. Bell , 205 Ill. 213, 68 N. E. 794.....	1163
Fennelly v. Anderson , 1 Ir. Eq. 706.....	1294
Fennessey v. Fennessey , 84 Ky. 519, 4 Am. St. Rep. 210, 2 S. W. 158.....	1171
Fenno v. Primrose , 116 Fed. 49.....	1518, 1521
Fennyery v. Ransom , 170 Mass. 303, 49 N. E. 620.....	50
Fenton v. Miller , 116 Mich. 45, 72 Am. St. Rep. 502, 74 N. W. 384.....	1210, 1213
Fenton v. Steere , 76 Mich. 405, 43 N. W. 437.....	1200
Fera v. Wickham , 136 N. Y. 223, 31 N. E. 1028, 17 L. R. A. 456..	371
Ferbrache v. Ferbrache , 110 Ill. 210.....	1351, 1353
Ferguson v. Ann Arbor R. Co. , 17 App. Div. 336, 45 N. Y. Supp. 172.....	1442
Ferguson v. Blackwell , 8 Okla. 489, 495, 58 Pac. 647..	1289, 1310, 1314
Ferguson v. Covington etc. Co. , 108 Ky. 662, 57 S. W. 460.....	788
Ferguson v. Fisk , 28 Conn. 501.....	1155
Ferguson v. Reed , 45 Tex. 574.....	1192

Ferguson v. Toledo etc. Co. , 83 N. Y. Supp. 233, 85 App. Div. 352.....	435
Ferreira v. Knipe , 28 Cal. 340, 87 Am. Dec. 123.....	869, 970
Ferrell v. Evans , 25 Mont. 444, 65 Pac. 714.....	221
Ferrell v. Ferrell , 53 W. Va. 515, 44 S. E. 187.....	1145
Ferris v. American Brewing Co. , 58 N. E. 701, 155 Ind. 539, 52 L. R. A. 305.....	515
Ferry v. Henry , 4 Pick. (Mass.) 74.....	1520, 1522
Fesler v. Brayton , 145 Ind. 71, 44 N. E. 37, 32 L. R. A. 578.....	588
Fessenden v. Ockington , 74 Me. 123.....	1149
Fessler v. Town of Union (N. J. Eq.), 56 Atl. 72.....	941
Fetridge v. Wells , 13 How. Pr. 385.....	1000
Feversham, Earl of, v. Watson , Freem. Ch. 35.....	1327
Fikes v. Vick , 50 Neb. 401, 69 N. W. 951.....	1120
Fidelity Ins. Co. v. Norfolk etc. R. Co. , 88 Fed. 815.....	383, 1080
Fidelity Ins. etc. Co. v. Shenandoah Co. , 42 Fed. 372.....	404
Fidelity Ins. etc. Co. v. Shenandoah Valley R. Co. , 86 Va. 1, 19 Am. St. Rep. 858, 9 S. E. 759.....	420
Fidelity Nat. Bank's Receiver v. Youtsey , 26 Ky. Law Rep. 340, 81 S. W. 263.....	425
Fidelity T. & S. V. Co. v. Mobile S. R. Co. , 53 Fed. 687.....	305, 306
Field v. Beaumont , 1 Swanst. 204.....	840
Field v. Jackson , Dick. 599.....	809
Field v. Jones , 11 Ga. 413.....	308
Field v. Leiter , 117 Ill. 341, 7 N. E. 279.....	1210
Field v. Western Springs , 181 Ill. 186, 54 N. E. 929.....	632, 685
Fielden v. Slater , L. R. 7 Eq. 523.....	502
Fields v. Clayton , 117 Ala. 538, 67 Am. St. Rep. 189, 23 South. 530.....	1157
Fifield v. Marinette County , 62 Wis. 532, 538, 22 N. W. 705.....	751, 752, 754, 755
Fifield v. Spring Valley Waterworks , 130 Cal. 552, 62 Pac. 1054.....	968
Fifth Nat. Bank v. Pierce , 117 Mich. 376, 75 N. W. 1058.....	170
Filder v. London etc. R. R. Co. , 1 Hem. & M. 489.....	543
Fildes v. Hooker , 3 Madd. 193, 195.....	1366
Files v. Brown , 124 Fed. 133, 59 C. C. A. 403.....	400
Filler v. Tyler , 91 Va. 458, 22 S. E. 235.....	493
Fillet v. Fassett , 44 Mo. 168, 100 Am. Dec. 275.....	990
Filson v. Crawford , 23 N. Y. St. Rep. 355, 5 N. Y. Supp. 882.....	925
Finance Co. v. Charleston C. & C. R. Co. , 45 Fed. 436.....	278, 280, 281
Finance Co. v. Charleston, C. & C. R. Co. , 48 Fed. 188.....	413
Finance Co. v. Charleston, C. & C. R. Co. , 52 Fed. 526.....	418, 419
Finance Co. v. Charleston, C. & C. R. Co. , 62 Fed. 205, 10 C. C. A. 323, 8 U. S. App. 547.....	414, 417, 422
Finch v. Houghton , 19 Wis. 150.....	168, 171
Finch v. Kent , 24 Mont. 268, 61 Pac. 653.....	1437
Finch v. Resbridger , 2 Vern. 390.....	881
Finch v. Underwood , 2 Ch. D. 310, 314.....	1327
Fincke v. Funke , 25 Hun. 616.....	354
Findlay v. Baltimore Trust & G. Co. , 97 Md. 716, 55 Atl. 379.....	1163
Findley v. Koch (Iowa), 101 N. W. 766.....	1336
Finegan v. Allen , 46 Ill. App. 553.....	895
Finegan v. Eckerson , 32 App. Div. 233, 52 N. Y. Supp. 993.....	872
Fink, Appeal of , 130 Pa. St. 256, 18 Atl. 621.....	1206
Fink v. Patterson , 21 Fed. 602.....	1426
Finlen v. Heinze , 28 Mont. 548, 73 Pac. 123.....	1296
Finlen v. Heinze (Mont.), 80 Pac. 918.....	1297

Finn v. Adams (Mich.), 101 N. W. 532.....	1119
Finney v. Bennett, 27 Gratt. 365.....	227
First Baptist Church v. Syms, 51 N. J. Eq. 363, 28 Atl. 461....	1097
First Evangelical Church v. Walsh, 57 Ill. 363, 11 Am. Rep. 21....	828
First Nat. Bank v. Bailey, 15 Mont. 301, 39 Pac. 83.....	714
First Nat. Bank v. Beebe, 62 Ohio St. 41, 56 N. E. 485.....	101
First Nat. Bank v. Bininger, 26 N. J. Eq. 345.....	88
First Nat. Bank v. Browne, 128 Ala. 557, 86 Am. St. Rep. 156, 29 South. 552.....	1402
First Nat. Bank v. Bunting, 7 Idaho, 27, 59 Pac. 929, 1106....	348, 353
First Nat. Bank v. City Trust Safe Dep. & Surety Co. of Phila., 114 Fed. 529, 52 C. C. A. 313.....	1504
First Nat. Bank v. Cook, 77 Ill. 622.....	678, 685
First Nat. Bank v. Covington, 103 Fed. 523.....	644, 657, 662
First National Bank v. Dunn, 97 N. Y. 149.....	327
First Nat. Bank v. Eastman, 144 Cal. 487, 103 Am. St. Rep. 95, 77 Pac. 1043.....	1429
First Nat. Bank v. Ewing, 103 Fed. 168, 43 C. C. A. 150....	408, 421
First Nat. Bank v. Fisher, 45 Kan. 726, 26 Pac. 482.....	694, 697
First Nat. Bank v. Gage, 93 Ill. 172.....	1452
First Nat. Bank v. Gibson (Neb.), 94 N. W. 965.....	1443
First Nat. Bk. v. Gustin etc. Min. Co., 42 Minn. 327, 18 Am. St. Rep. 510, 44 N. W. 198, 6 L. R. A. 676.....	1458
First Nat. Bank v. Hazel, 63 Neb. 844, 89 N. W. 378, 56 L. R. A. 765.....	1423
First Nat. Bank v. Hungate, 62 Fed. 548.....	661, 662
First Nat. Bank v. Illinois Steel Co., 174 Ill. 140, 51 N. E. 200	175, 179
First Nat. Bk. v. Mortimer, 28 Misc. Rep. 686, 60 N. Y. Supp. 47....	1421
First Nat. Bank v. Nelson, 106 Ala. 535, 18 South. 154.....	37
First Nat. Bank v. Oregon Paper Co., 42 Or. 398, 71 Pac. 144, 971.....	426, 427
First Nat. Bank v. Portsmouth Sav. Bank, 71 N. H. 547, 53 Atl. 1017.....	531
First Nat. Bank v. Prager, 91 Fed. 689, 63 U. S. App. 709, 34 C. C. A. 51.....	1426
First Nat. Bank v. Pullen, 129 Ala. 638, 29 South. 685.....	1097
First Nat. Bank v. Sarlls, 129 Ind. 201, 28 Am. St. Rep. 185, 28 N. E. 434, 13 L. R. A. 481.....	895
First Nat. Bank v. Shedd, 121 U. S. 74, 7 Sup. Ct. 807, 30 L. ed. 877.....	399
First Nat. Bank v. Shuler, 153 N. Y. 163, 60 Am. St. Rep. 601, 47 N. E. 262.....	1443, 1449, 1453
First Nat. Bank v. Sloman, 42 Neb. 350, 47 Am. St. Rep. 707, 60 N. W. 589.....	1427
First Nat. Bank v. Tyson, 133 Ala. 439, 91 Am. St. Rep. 46, 33 South. 144.....	936, 941, 952
First Nat. Bank v. West River R. R., 46 Vt. 633.....	89
First Nat. Bank v. Wheeler, 12 Tex. Civ. App. 489, 33 S. W. 1093.....	1506, 1510, 1512
First Nat. Bank v. Wright, 38 App. Div. 2, 56 N. Y. Supp. 308....	1443
Fischer v. Gaither, 32 Or. 161, 51 Pac. 736.....	1481, 1482, 1488
Fischer v. Superior Court, 98 Cal. 67, 32 Pac. 875.....	299
Fischer v. Superior Court, 110 Cal. 129, 141, 42 Pac. 561.....	212, 235, 261, 273
Fish v. Leser, 69 Ill. 394.....	1309
Fish v. Smith, 73 Conn. 377, 84 Am. St. Rep. 161, 47 Atl. 711....	360, 449

Fishback v. Bodman & Co. , 14 Bush (Ky.), 117.....	1504
Fishburne v. Ferguson , 85 Va. 321, 7 S. E. 361.....	1361
Fishel v. Lueckel , 53 Fed. 499.....	984, 985
Fisher v. Board of Trade , 80 Ill. 85.....	556
Fisher v. Carpenter , 67 N. H. 569, 39 Atl. 1018.....	830, 856
Fisher v. Keane , L. R. 11 Ch. D. 353.....	554
Fisher v. Knight , 61 Fed. 491, 9 C. C. A. 582, 17 U. S. App. 502..	367
Fisk v. Hartford , 70 Conn. 720, 66 Am. St. Rep. 147, 40 Atl. 906	
.....	908, 922
Fisk v. Ley , 76 Conn. 295, 56 Atl. 559.....	503, 952
Fisk v. Springfield , 116 Mass. 88, 89.....	468
Fisk v. Wilber , 7 Barb. 395.....	878
Fitch v. Brower , 42 N. J. Eq. 300, 11 Atl. 330.....	68
Fitch v. Miller , 200 Ill. 170, 65 N. E. 650.....	54
Fitch v. Stallings , 5 Colo. App. 106, 38 Pac. 393.....	1510
Fitchett v. Murphy , 61 N. Y. Supp. 182, 46 App. Div. 181.....	546
Itts v. McGhee , 172 U. S. 516, 19 Sup. Ct. 269, 43 L. ed. 535...	1084
Fitzburgh v. Everingham , 6 Paige, 29.....	188
Fitzgerald v. Fitzgerald & Mallory Const. Co. , 44 Neb. 463, 62	
N. W. 899.....	41
Fitzgerald v. Harms , 92 Ill. 372.....	606
Fitzgerald v. Urton , 5 Cal. 308.....	830
Fitzhugh v. Barnard , 12 Mich. 104.....	1235
Fitzmaurice v. Mosier , 116 Ind. 365, 9 Am. St. Rep. 854, 16 N.	
E. 175, 19 N. E. 180.....	1152, 1154
Fitzpatrick v. Dorland , 27 Hun, 291.....	1319
Fixen, In re , 96 Fed. 748.....	256
Flaccus v. Smith , 199 Pa. St. 128, 85 Am. St. Rep. 779, 84 Atl.	
894, 54 L. R. A. 640.....	1010, 1011, 1036
Flackhammer v. Himes , 24 R. I. 306, 53 Atl. 46.....	1385
Flagler v. Blunt , 32 N. J. Eq. 518, 523.....	149
Flaherty v. Moran , 81 Mich. 52, 2 Am. St. Rep. 510, 45 N. W.	
381, 8 L. R. A. 183.....	901
Flaherty v. Portland etc. Benev. Assn. (Me.) , 58 Atl. 58.....	554
Flanagan v. Duncan , 133 Pa. St. 373, 19 Atl. 405, 7 L. R. A. 412..	1488
Flannagan v. Forrest , 94 Ga. 685, 21 S. E. 712.....	1507
Flanner v. Moore , 2 Jones, 123.....	1189
Flannery v. Hightower , 97 Ga. 592, 25 S. E. 371....	809, 810, 811, 836
Flavel v. Harrison , 10 Hare, 467.....	1000
Flash v. Wilkerson , 22 Fed. 689.....	1426
Fleckenstein Bros. Co. v. Fleckenstein (N. J. Eq.) 53 Atl. 1043	
.....	524, 525
Fleckenstein Bros. Co. v. Fleckenstein (N. J. Eq.) , 57 Atl. 1025..	525
Flecker v. Emporia City Ry. Co. , 48 Kan. 577, 30 Pac. 18.....	225
Fleischner v. Bank of McMinnville , 36 Or. 553, 54 Pac. 884, 60	
Pac. 603, 61 Pac. 345.....	1431
Fleischner v. Citizens' etc. Co. , 25 Or. 119, 35 Pac. 174.....	873
Fleming v. Carson , 37 Or. 252, 62 Pac. 374.....	147, 150
Fleming v. Grafton , 54 Miss. 79.....	1432, 1434
Fleming v. Guthrie , 32 W. Va. 1, 25 Am. St. Rep. 792, 9 S. E. 23,	
3 L. R. A. 53.....	589
Fleming v. Peterson , 167 Ill. 465, 47 N. E. 755.....	1267
Flenham v. Stewart , 45 Neb. 640, 63 N. W. 924.....	335, 336
Fletcher, Ex parte , 6 Ves. 427.....	279
Fletcher v. Bealey , L. R. 28 Ch. D. 688.....	885
Fletcher v. Grover , 11 N. H. 368, 35 Am. Dec. 497.....	1483
Fletcher v. Harney Peak Tin Min. Co. , 84 Fed. 555.....	454
Fletcher v. Krupp , 35 App. Div. 586, 55 N. Y. Supp. 146..	174, 183, 272

Fletcher v. Tuttle, 151 Ill. 41, 42 Am. St. Rep. 220, 37 N. E. 683, 25 L. R. A. 143.....	587, 588
Fletcher v. Vandusen, 52 Iowa, 448, 3 N. W. 488.....	1526
Fletcher Co. v. Association of Machinists (N. J. Ch.), 55 Atl. 1077.....	1014, 1022
Flight v. Bolland, 4 Russ. 299.....	1293
Flint v. Brandon, 8 Ves. 159.....	1279
Flint v. Charman, 6 App. Div. 121, 39 N. Y. Supp. 892.....	509
Flint v. Hutchinson Smoke-Burner Co., 110 Mo. 492, 33 Am. St. Rep. 476, 19 S. W. 804, 16 L. R. A. 243.....	1057
Flint v. Webb, 25 Minn. 263.....	196
Flint v. Zimmerman, 70 Minn. 346, 73 N. W. 175.....	195, 196
Mocken, In re, 107 Fed. 241.....	236
Flood v. Van Wormer, 147 N. Y. 284, 41 N. E. 569, affirming 70 Hun, 415, 24 N. Y. Supp. 460.....	577
Florence v. Hopkins, 46 N. Y. 186.....	1198
Florence v. Paschall, 50 Ala. 28.....	1226
Florence Gas etc. Co. v. Hanby, 101 Ala. 15, 13 South. 343.....	390
Florer v. McAfee, 135 Ind. 540, 35 N. E. 277.....	690, 691
Florida Packing & Ice Co. v. Carney (Fla.), 38 South. 602.....	674
Florida Southern R. Co. v. Hill, 40 Fla. 1, 74 Am. St. Rep. 124, 23 South. 566.....	788
Flour City Nat. Bank v. Shire (N. Y.), 72 N. E. 1141.....	1466
Floyd v. Jayne, 6 Johns. Ch. 479.....	1078
Fluharty v. Mills, 49 W. Va. 446, 38 S. E. 521.....	826, 827
Fluker v. Emporia R. R. Co., 48 Kan. 587, 30 Pac. 18.....	107, 108
Fluker v. Taylor, 3 Drew. 183.....	1516, 1517
Flynn v. Little Falls E. & W. Co., 74 Minn. 180, 77 N. W. 38, 78 N. W. 106.....	610, 629
Flynn v. Taylor, 127 N. Y. 596, 28 N. E. 418, 14 L. R. A. 556....	930
Flynn v. Woolman, 133 Mich. 508, 95 N. W. 567.....	706
F. Meyer Boot & Shoe Co. v. C. Shenkberg Co., 11 S. Dak. 620, 80 N. W. 126.....	1422
Fobes v. Shattuck, 22 Barb. 568.....	1183, 1186
Fogarty v. Cincinnati, 7 Ohio N. P. 100, 9 Ohio St. & C. P. Dec. 753.....	853
Fogg v. Providence Lumber Co., 15 R. I. 15, 23 Atl. 31.....	294
Foley v. Doddridge County Court, 54 W. Va. 16, 46 S. E. 246....	764
Foley v. Guarantee etc. Co., 74 Fed. 764, 21 C. C. A. 78.....	1424
Foley v. Hill, 2 H. L. Cas. 28, 46.....	1518, 1519, 1523
Foley v. Ruley, 50 W. Va. 158, 40 S. E. 382, 55 L. R. A. 916....	1449
Folger v. Columbian Ins. Co., 99 Mass. 267, 96 Am. Dec. 747....	244
Foll, Appeal of, 91 Pa. St. 434, 36 Am. Rep. 671.....	1269
Follett v. Field, 30 La. Ann. 162.....	221
Folley v. Passaic, 26 N. J. Eq. 216.....	765, 836
Follmer v. Nuckolls Co., 6 Neb. 204.....	598, 623
Folsom v. Ballard, 70 Fed. 12, 36 U. S. App. 75, 16 C. C. A. 593....	1125
Folsom v. Marsh, 2 Story, 100, Fed. Cas. No. 4901.....	987, 989
Folsom v. McCague, 29 Neb. 124, 45 N. W. 269.....	1265
Foltz v. St. Louis & S. F. Ry. Co., 19 U. S. App. 576, 60 Fed. 316, 8 C. C. A. 635.....	1090
Fonda v. Sage, 48 N. Y. 179.....	1225, 1229
Forbell v. New York, 164 N. Y. 522, 79 Am. St. Rep. 666, 58 N. E. 644, 51 L. R. A. 695.....	898, 971
Forbes v. Carl (Iowa), 101 N. W. 100.....	517
Forbes v. Detroit (Mich.), 102 N. W. 740.....	931
Forbes v. Hall, 102 Ga. 47, 66 Am. St. Rep. 152, 28 S. E. 915....	1130

Forbes v. Rome, W. & O. R. Co., 121 N. Y. 505, 24 N. E. 921, 8 L. R. A. 453.....	777
Ford v. Belmont, 69 N. Y. 567.....	1246
Ford v. Chicago & N. W. R. Co., 14 Wis. 609, 80 Am. Dec. 791..	771
Ford v. Ford, 1 Miss. (Walk.) 505, 12 Am. Dec. 587	1107
Ford v. Foster, L. R. 7 Ch. 611.....	1000
Ford v. Gilbert, 42 Or. 528, 71 Pac. 971.....	428
Ford v. Hill, 92 Wis. 188, 53 Am. St. Rep. 902, 66 N. W. 115....	1120
Ford v. Judsonia Mercantile Co., 52 Ark. 426, 20 Am. St. Rep. 192, 12 S. W. 876, 6 L. R. A. 714.....	293
Ford v. Kansas City etc. Ry. Co., 52 Mo. App. 439.....	204
Ford v. Knapp, 102 N. Y. 140, 55 Am. Rep. 782, 6 N. E. 283....	1211
Ford v. Plankinton Bank, 87 Wis. 363, 58 N. W. 766.....	247, 293
Fordyce v. Dixon, 70 Tex. 694, 8 S. W. 504.....	350
Fordyce v. Du Bose, 87 Tex. 78, 26 S. W. 1050.....	350
Fordyce v. Ford, 4 Bro. C. C. 494, 498.....	1336, 1337, 1366
Foreman v. Central Trust Co., 71 Fed. 776, 18 C. C. A. 321.....	329
Foreman v. Hough, 98 N. C. 386, 3 S. E. 912.....	1184
Forest River Land Co. v. City of Salem, 165 Mass. 193, 42 N. E. 802	75, 703
Forker v. Brown, 30 N. Y. Supp. 827, 10 Misc. Rep. 161.....	362
Forman v. Healey, 11 N. D. 563, 93 N. W. 866.....	484, 850
Formby v. Parker, [1903] 2 Ch. 539.....	502
Forrester v. Boston & M. etc. Co., 21 Mont. 544, 55 Pac. 229, 353..	541
Forrester v. Boston & M. etc. Co., 29 Mont. 397, 76 Pac. 211....	426
Forrester v. Flores, 64 Cal. 24, 28 Pac. 107.....	1354
Forrest's Exrs. v. Luddington, 68 Ala. 1.....	1494
Forsaith Mach. Co. v. Hope Mill Lumber Co., 109 N. C. 576, 13 S. E. 869.....	107
Fort v. Thompson, 49 Neb. 772, 69 N. W. 110.....	591
Fort Clark etc. Co. v. Anderson, 108 Ill. 643, 48 Am. Rep. 545....	821
Fort Dodge Electric L. & P. Co. v. City of Ft. Dodge, 115 Iowa, 568, 89 N. W. 7.....	693
Forth v. Duke of Norfolk, 4 Madd. 503	1407
Forthman v. Deters, 206 Ill. 159, 99 Am. St. Rep. 145, 69 N. E. 97.....	1293, 1336
Fort Jefferson Imp. Co. v. Dupoyster, 112 Ky. 792, 23 Ky. Law Rep. 1501, 66 S. W. 1048.....	1498
Fort Payne Coal & Iron Co. v. Webster, 163 Mass. 134, 39 N. E. 786	357
Fort Payne Furnace Co. v. Fort Payne Coal Co., 96 Ala. 472, 38 Am. St. Rep. 109, 11 South. 439.....	108, 110, 113, 116, 208, 229
Fort Smith Milling Co. v. Mikles, 61 Ark. 123, 32 S. W. 493....	1146
Fort Wayne v. Fort Wayne & T. R. Co. (Ind.), 48 N. E. 342....	765
Fort Wayne v. Shoaf, 106 Ind. 66, 5 N. E. 403.....	690
Fort Wayne El. Corp. v. Franklin Electric Light Co., 57 N. J. Eq. 16, 41 Atl. 217; affirmed, 58 N. J. Eq. 579, 43 Atl. 1098..	243, 244
Fort Wayne, M. & C. R. Co. v. Mellett, 92 Ind. 535.....	330
Forth Worth & R. G. R. Co. v. Jennings, 76 Tex. 373, 13 S. W. 270, 8 L. R. A. 180.....	765
Fortune v. Watkins, 94 N. C. 304, 315.....	1369
Fosdick v. Lowell Machine Shop, 58 Fed. 817.....	1140
Fosdick v. Schall, 99 U. S. 235, 25 L. ed. 339.....	413, 414, 417
Foshee v. McCreary, 123 Ala. 493, 26 South. 309.....	1075
Foster v. Duggan, 8 Ohio. 106, 31 Am. Dec. 432.....	1206
Foster v. Foster, 56 Vt. 540.....	477

Foster v. Ives , 53 Vt. 458	1527
Foster v. Mansfield etc. Co. , 146 U. S. 88, 13 Sup. Ct. 28, 36 L. ed. 899	44, 54
Foster v. Retail Clerks' Assn. (1902), 39 Misc. Rep. (N. Y.) 48, 78 N. Y. Supp. 860	1014, 1015, 1026, 1029
Foster v. Roseberry (Tex. Civ. App.), 78 S. W. 701	516
Foster v. Townshend , 68 N. Y. 206	353
Foster v. Wood , 6 Johns. Ch. 87	1078
Fothergill v. Rowland , L. R. 17 Eq. 132, 140	497, 530, 1266
Fougeray v. Cord , 50 N. J. Eq. 185, 756, 24 Atl. 499, 26 Atl. 866	224
Fountain v. Mills , 111 Ga. 122, 36 S. E. 428	436
Foust v. Moorman , 2 Ind. 17	1201
Foust v. Warren (Tex. Civ. App.), 72 S. W. 404	1120
Fowle v. Park , 48 Fed. 789	37, 52
Fowler, In re , L. R. 16 Ch. D. 723	161, 204
Fowler v. Fowler , 204 Ill. 82, 68 N. E. 414	1288
Fowler v. Jarvis-Conklin Mtg. Co. , 63 Fed. 888	278, 283, 434
Fowler v. Lee , 10 Gill & J. 358, 32 Am. Dec. 172	1120
Fowler v. St. Joseph , 37 Mo. 229	711, 1238
Fowler v. Superior , 85 Wis. 411, 54 N. W. 800	624
Fox v. Curtis , 176 Pa. St. 52, 34 Atl. 952, 38 W. N. Cas. 321	114, 149
Fox v. Fee , 24 App. Div. 314, 49 N. Y. Supp. 292	1207
Fox v. Hale & Norcross S. M. Co. , 108 Cal. 475, 41 Pac. 328	259
Fox v. Holcomb , 32 Mich. 494	907
Fox v. Lipe , 14 Colo. App. 258, 59 Pac. 850	1437
Fov v. McClay , 48 Neb. 820, 67 N. W. 888	1075
Fox v. Robbins (Tex. Civ. App.), 62 S. W. 815	1096, 1116
Fox v. Sutton , 127 Cal. 515, 59 Pac. 939	101
Fox v. Williams , 92 Wis. 320, 66 N. W. 357	1240, 1249
Foxwell v. Van Greetten . [1897] 1 Ch. 64	155
Fraley v. Peters , 12 Bush. 469	1173, 1174
Fralich v. Despar , 165 Pa. St. 24, 30 Atl. 521	531
Frame v. Dawson , 14 Ves. 386	1350
Francis v. Flinn , 118 U. S. 385, 6 Sup. Ct. 1148, 30 L. ed. 165	1050, 1056
Francis v. Taylor , 31 Misc. Rep. 187, 65 N. Y. Supp. 28	553
Francisco v. Smith , 143 N. Y. 488, 38 N. E. 980	524, 525
Franco v. Bollon , 3 Ves. 368	1152
Franco-American L. & B. Assn. v. Joy , 56 Mo. App. 433	98
Frank v. Brunneman , 8 W. Va. 462	513, 808
Frank v. Herold (1901), 63 N. J. Eq. 443, 52 Atl. 152	1013, 1022, 1037
Frank v. Morrison , 58 Md. 423	359, 365
Frank v. Peyton , 82 Ky. 150	33
Frank v. Stratford-Handcock (Wyo.), 77 Pac. 134	1292, 1296
Frankel v. Garrard , 160 Ind. 209, 66 N. E. 687	1114
Franklin v. Appel , 10 S. D. 391, 73 N. W. 259	739
Franklin Nat. Bank v. Whitehead , 149 Ind. 560, 63 Am. St. Rep. 302, 49 N. E. 592, 39 L. R. A. 725	372
Franklin Tel. Co. v. Harrison , 145 U. S. 459, 472, 473, 12 Sup. Ct. 900, 36 L. ed. 776	1312, 1315, 1317, 1318
Franks v. Morris , 9 W. Va. 664	1086
Fraternal Guardian's Estate , 159 Pa. St. 603, 28 Atl. 479	245
Frayser v. Richmond & A. R. Co. , 81 Va. 388	297
Frazer v. Frazer Lubricator Co. , 121 Ill. 147, 2 Am. St. Rep. 73, 13 N. E. 639	523

Frazier v. Barnum , 19 N. J. Eq. 316, 97 Am. Dec. 666....	192, 1421
Frazier v. Brown , 12 Ohio St. 294.....	898
Frazier v. Miller , 16 Ill. 48.....	1158
Freda v. Montauk Co. , 55 N. Y. Supp. 748, 26 Misc. Rep. 199....	72
Frede v. Pilugradt , 85 Wis. 119, 55 N. W. 159.....	1351
Fredenheim v. Rohr , 87 Va. 764, 13 S. E. 193, 266	262, 268
Frederick v. Douglas Co. , 96 Wis. 411, 71 N. W. 798.....	629
Fredericks v. Huber , 180 Pa. St. 572, 37 Atl. 90.....	850, 1069
Fredericks v. Mayer , 13 How. Pr. 566.....	519
Freeburg v. Erksell , 123 Iowa, 464, 99 N. W. 118.....	1509
Free Gold Min. Co. v. Spiers , 136 Cal. 484, 69 Pac. 143.....	389
Freeholders of Middlesex v. State Bank , 28 N. J. Eq. 166.....	282
Freeman v. Freeman , 136 Mass. 260.....	1530
Freeman v. Freeman , 43 N. Y. 34, 3 Am. Rep. 657.....	1360, 1361
Freeman v. Howe , 24 How. 450, 16 L. ed. 749.....	327
Freeman v. Mebane , 2 Jones Eq. (N. C.) 44.....	1494
Freeman v. Reagan , 26 Ark. 378.....	1163
Freeman v. Stewart , 119 Ala. 158, 24 South. 31.....	190, 1444
Freeman v. Stokes , 12 Phila. 219.....	1294
Freeman v. Winchester , 10 Smedes & M. (18 Miss.) 577.....	357
Freer v. Davis , 52 W. Va. 1, 94 Am. St. Rep. 895, 43 S. E. 164, 59 L. R. A. 556.....	848
Freer v. Davis , 52 W. Va. 35, 94 Am. St. Rep. 910, 43 S. E. 172..	154
Freeson v. Bissell , 63 N. Y. 168, 170.....	1333
French v. Commercial Nat. Bank , 79 Ill. App. 110; affirmed, 199 Ill. 213. 65 N. E. 252.....	1432, 1434
French v. Gifford , 30 Iowa, 148.....	209, 261, 273
French v. Hay , 22 Wall. 250, 22 L. ed. 857.....	1127
French v. Parker , 16 R. I. 219, 27 Am. St. Rep. 733, 14 Atl. 870..	524
French v. Snell , 29 N. J. Eq. 95.....	493
French v. Woodruff , 25 Colo. 339, 54 Pac. 1015.....	55
French Bank Case , 53 Cal. 495.....	227, 235, 238, 246
Frenehe v. Kitchen , 53 N. J. Eq. 37, 30 Atl. 815.....	1440
French Mfg. Co., In re , 12 Hun, 488.....	552
Freud v. Detroit & P. Ry. Co. , 133 Mich. 413, 95 N. W. 559....	836
Frewin v. Lewis , 4 Mylne & C. 254.....	607
Frey v. Willoughby , 63 Fed. 865, 27 U. S. App. 417, 11 C. C. A. 463	1197
Frick Co. v. Ketels , 42 Kan. 527, 16 Am. St. Rep. 507, 22 Pac. 580.....	1402, 1403
Fricker v. Peters etc. Co. , 21 Fla. 254.....	261, 266, 268
Friedlander v. Fenton , 180 Ill. 312, 72 Am. St. Rep. 207, 54 N. E. 329	1400
Friend v. Lamb , 152 Pa. St. 529, 34 Am. St. Rep. 672, 25 Atl.... 577	1309, 1311
Friend v. Mallory , 52 W. Va. 53, 43 S. E. 115.....	1295
Friese v. Hummel , 26 Or. 145, 46 Am. St. Rep. 610, 37 Pac. 458..	1105
Frietas v. Dos Santos , 1 Younge & J. 574.....	1518
Frink v. Hughes , 133 Mich. 63, 94 N. W. 601.....	510
Frisbie v. Bateman , 24 N. J. Eq. 28.....	171
Frith v. Roe , 23 Ga. 139.....	1086
Fritz v. Fritz (Minn.) , 102 N. W. 705.....	1142, 1148
Fritzyer v. Robinson , 70 Iowa, 500, 31 N. W. 61.....	1151
Froebrich v. Lane (Or.) , 76 Pac. 351.....	1091, 1099
Front St. Cable Ry. Co. v. Drake , 84 Fed. 257.....	424
Frost v. Belmont , 6 Allen, 152.....	468
Frost v. Leatherman , 55 Mich. 33, 37, 20 N. W. 705.....	1222

Frost v. Spitley , 121 U. S. 552, 7 Sup. Ct. 1129, 30 L. ed. 1010	1230, 1231, 1233
Frost v. Thomas , 26 Colo. 222, 77 Am. St. Rep. 259, 56 Pac. 899..	584
Frost v. Heywood , 2 Dowl., N. S., 801.....	99
Frowenfeld v. Casey , 139 Cal. 421, 73 Pac. 152.....	943
Frowert v. Blank , 205 Pa. St. 299, 54 Atl. 1000.....	443, 455
Frow, Jacobs & Co.'s Estate , 73 Pa. St. 459.....	1497
Frue v. Loring , 120 Mass. 507.....	1518
Fry v. Charter Oak L. Ins. Co. , 31 Fed. 197.....	449
Fry v. Old Dominion B. & L. Assn. , 48 W. Va. 61, 35 S. E. 842..	569
Fry v. Payne , 82 Va. 759, 1 S. E. 197.....	1213
Fry v. Platt , 32 Kan. 62, 3 Pac. 781.....	1288, 1289, 1290
Fry v. Summers , 4 Idaho, 424, 39 Pac. 1118.....	1218
Fryberger v. Berven , 88 Minn. 311, 92 N. W. 1125.....	1432
Frye v. Miley , 54 W. Va. 324, 46 S. E. 135.....	1426
Fulkerson v. Chisna M. & I. Co. , 122 Fed. 782.....	1246
Fullenwider v. Supreme Council etc. League , 73 Ill. App. 321....	856
Fuller v. Brown , 76 Hun, 557, 28 N. Y. Supp. 189.....	1432
Fuller v. Detroit F. & M. Ins. Co. , 36 Fed. 469, 1 L. R. A. 891....	1483
Fuller v. Inhab. of Melrose , 1 Allen, 166.....	468, 621
Fuller v. John S. Davis Sons Co. , 184 Ill. 505, 56 N. E. 791; affirm- ing 84 Ill. App. 295.....	1497
Fuller v. Little , 69 Ill. 229.....	1078
Fuller v. Montague , 59 Fed. 212, 8 C. C. A. 100.....	1200
Fuller v. Percival , 126 Mass. 381.....	1154
Fuller v. Swan etc. Co. , 12 Colo. 12, 19 Pac. 836.....	869, 965
Fuller v. Taylor , 6 N. J. Eq. (2 Halst. Ch.) 301.....	188, 191
Fuller v. Townsley-Myrick Dry Goods Co. , 58 Ark. 314, 24 S. W. 635.....	1119
Fuller & J. Mfg. Co. v. Bartlett , 68 Wis. 73, 60 Am. Rep. 838, 31 N. W. 747.....	1263
Fullerton v. Bailey , 17 Utah, 85, 53 Pac. 1020....	1498, 1509
Fullerton v. Fordyce , 121 Mo. 1, 42 Am. St. Rep. 516, 25 S. W. 587.....	341, 411
Fullington v. Kyle Lumber Co. , 139 Ala. 242, 35 South. 852....	499
Fullwood v. Fullwood , L. R. 9 Ch. Div. 176.....	50
Fulton v. Greocen , 36 N. J. Eq. 216.....	941, 947, 957, 959
Funk v. Brooklyn Glass & Mfg. Co. , 25 Misc. Rep. 91, 53 N. Y. Supp. 1086.....	1132
Funk v. Thomasson , 84 Mo. App. 490.....	95
Furlong v. Edwards , 3 Md. 99.....	113, 114, 190
Furnival v. Crew , 3 Atk. 83, 87.....	1253
Furnald v. Glenn , 56 Fed. 372.....	1124
Furnald v. Glenn , 26 U. S. App. 202, 64 Fed. 49, 12 C. C. A. 27..	1082
Fuselier v. Baineau , 14 La. Ann. 764.....	1489
F. W. Dodge Co. v. Construction Information Co. , 183 Mass. 62, 97 Am. St. Rep. 412, 66 N. E. 204, 60 L. R. A. 810.....	531, 987

G

Gableman v. Peoria etc. R. Co. , 179 U. S. 335, 21 Sup. Ct. 171, 45 L. ed. 220.....	341, 343
Gage v. Billings , 56 Ill. 268.....	1226, 1232
Gage v. Bissell , 119 Ill. 298, 10 N. E. 238.....	1200
Gage v. Chapman , 56 Ill. 311.....	1227
Gage v. Cummings , 209 Ill. 120, 70 N. E. 679.....	1296
Gage v. Hampton , 127 Ill. 87, 20 N. E. 12, 2 L. R. A. 512.....	1234
Gage v. Reid , 104 Ill. 509.....	1198

Gage v. Riverside Trust Co., 86 Fed. 984.....	1127
Gage v. Rohrbach, 56 Ill. 262.....	1227, 1228, 1232
Gage v. Smith, 79 Ill. 219.....	188
Gail v. Wackerbarth, 28 Fed. 286.....	995
Gaines v. E. Whyte Grocery etc. Co., 107 Mo. App. 507, 81 S. W. 648.....	990
Gaines v. Leslie, 1 Ind. Ter. 546, 37 S. W. 947.....	843
Gaines v. Kendall, 176 Ill. 228, 52 N. E. 141.....	1360
Gaines v. Thompson, 74 U. S. (7 Wall.) 347, 19 L. ed. 62.....	583
Gainey v. Gilson, 149 Ind. 58, 48 N. E. 633.....	354
Gaither v. Green, 40 La. 362, 4 South. 210.....	701
Gale v. Abbot, 8 Jur., N. S. 987.....	964
Gale v. Archer, 42 Barb. 320.....	1332
Gale Mfg. Co. v. Sleeper (Kan.), 79 Pac. 648.....	1132
Gall v. Gall, 64 Hun, 600, 611, 19 N. Y. Supp. 332.....	1315
Gallagher v. Asphalt Co. (N. J. Eq.), 58 Atl. 403.....	242
Gallagher v. Gallagher, 31 W. Va. 9, 5 S. E. 297.....	1348, 1351, 1354
Gallagher v. Garland (Iowa), 101 N. W. 867.....	693
Gallagher v. Equitable Gaslight Co., 141 Cal. 699, 75 Pac. 329....	532
Gallagher v. Fayette Co. R. R., 38 Pa. St. 102.....	535
Gallagher v. Flury, 99 Md. 181, 57 Atl. 672.....	892
Gallagher v. Kearns, 27 Hun, 375.....	187
Gallegher v. Dodge, 48 Conn. 387, 40 Am. Rep. 182.....	901
Gallihier v. Cadwell, 145 U. S. 368, 12 Sup. Ct. 873, 36 L. ed. 738 (affirming 3 Wash. T. 501, 18 Pac. 68).....	47
Galloway v. Campbell, 142 Ind. 324, 41 N. E. 597.....	198
Galluchat, Ex parte, 1 Hill Eq. (S. C.) 148.....	165
Galusha v. Wendt, 114 Iowa, 597, 87 N. W. 512.....	1518
Galveston etc. Ry. v. McDonald, 53 Tex. 510.....	1419
Galway v. Metropolitan Elev. R. Co., 128 N. Y. 132, 28 N. E. 479, 13 L. R. A. 788.....	50, 782, 788, 922
Galwey v. United States Steam Sugar Refining Co., 13 Abb. Pr. 211.....	244
Gannert v. Rupert, 127 Fed. 962, 62 C. C. A. 594.....	990
Gannett v. Albee, 103 Mass. 372.....	1328
Gannon v. Denney (Neb.), 97 N. W. 959.....	821
Gannon v. Peterson, 193 Ill. 372, 62 N. E. 210, 55 L. R. A. 701..	818
Gans v. Marx, 25 Tex. Civ. App. 497, 61 S. W. 527.....	1437
Garden City Bank etc. Co. v. Geilfuss, 86 Wis. 612, 57 N. W. 349.....	247, 288, 292
Garden City Sand Co. v. Am. Refuse Crematory Co., 205 Ill. 42, 68 N. E. 724.....	1471
Garden City Wire etc. Co. v. Kauser, 67 Ill. App. 108.....	1120
Gardiner v. Van Alstyne, 163 N. Y. 573, 57 N. E. 1110.....	1092
Gardiner Sav. Inst. v. Emerson, 91 Me. 535, 40 Atl. 551.....	98
Gardner v. Blane, 1 Hare, 381.....	138
Gardner v. Caldwell, 16 Mont. 221, 40 Pac. 590.....	309, 311, 314
Gardner v. Douglass, 64 Tex. 76.....	1130
Gardner v. Knight, 124 Ala. 273, 27 South. 298.....	1143, 1160
Gardner v. Mobile etc. R. Co., 102 Ala. 635, 48 Am. St. Rep. 84, 15 South. 271.....	1135
Gardner v. Ogden, 22 N. Y. 327, 332-339, 78 Am. Dec. 192.....	31
Gardner v. Stroeveer, 81 Cal. 148, 22 Pac. 483, 6 L. R. A. 90.....	1068
Gardner v. Terry, 99 Mo. 523, 12 S. W. 888, 7 L. ed. 67.....	1225
Gardner v. Trustees etc. Newburgh, 2 Johns. Ch. 162, 7 Am. Dec. 526.....	767, 869, 881, 967
Gargans v. Pope, 184 Mass. 571, 100 Am. St. Rep. 575, 69 N. E. 343.....	1152

Garland v. Garland , 2 Ves. Jr. 137	280
Garland v. Rivers , 4 Rand. 282, 15 Am. Dec. 756.....	1410
Garland's Admr. v. Garland's Admr. (Va.), 24 S. E. 505.....	45
Garner v. Cutting , 32 Iowa, 547.....	817
Garner v. Reis , 25 Minn. 475.....	1517
Garnet v. Jacksonville etc. R. Co. , 20 Fla. 889.....	770
Garnett v. Wills , 24 Ky. Law Rep. 617, 69 S. W. 695.....	1533
Garr v. Redman , 6 Cal. 575.....	1520, 1522
Garrard v. Frankel , 30 Beav. 445.....	1141, 1146
Garrett v. Bishop , 27 Or. 349, 41 Pac. 10.....	821, 832
Garrett v. Colvin , 77 Miss. 408, 26 South. 963.....	1196
Garrett v. Lake Roland El. Ry. Co. , 79 Md. 280, 29 Atl. 830, 24 L. R. A. 396.....	774
Garrett v. Lynch , 45 Ala. 204.....	17
Garretson v. Weaver , 3 Edw. Ch. (N. Y.) 385.....	143
Garrison v. Atlanta , 68 Ga. 64.....	634
Garrison v. Cooke , 96 Tex. 228, 97 Am. St. Rep. 906, 72 S. W. 54.....	1328
Garrison v. Memphis Ins. Co. , 19 How. (60 U. S.) 312, 15 L. ed. 656.....	1496
Garst v. Charles (Mass.), 72 N. E. 839.....	531
Garth v. Cotton , 1 Ves. 524, 556, Dick. 183, 1 Lead. Cas. Eq. (4th Am. ed.) 955.....	816
Garver v. Kent , 70 Ind. 428	357, 363
Gary v. Northwestern M. A. Assn. (Iowa), 50 N. W. 27.....	66
Gash v. Ledbetter , 6 Ired. Eq. (N. C.) 185.....	1209
Gaskell v. Gaskell , 6 Sim. 643.....	1186, 1196, 1202
Gas Light & Coke Co. v. City of Albany , 139 Ind. 660, 39 N. E. 462.....	1290
Gaslight & E. Co. of New Albany v. New Albany , 139 Ind. 660, 39 N. E. 462.....	498, 535
Gassenheimer v. Kellogg , 121 Ala. 109, 26 South. 29.....	1443
Gasquet v. Oakey , 19 La. 76	1479
Gates v. Andrews , 37 N. Y. 657, 97 Am. Dec. 764.....	1437
Gates v. Barrett , 79 Ky. 295	698, 699
Gates v. Boomer , 17 Wis. 455.....	1445
Gates v. Frazer , 9 Ill. App. 624.....	1522
Gates v. Grand Rapids , 134 Mich. 96, 95 N. W. 998.....	707
Gates v. Johnstown Lumber Co. , 172 Mass. 495, 52 N. E. 736....	821
Gates v. Parmly , 93 Wis. 294, 66 N. W. 253, 67 N. W. 739.....	1261
Gates v. Paul , 117 Wis. 170, 94 N. W. 55.....	31
Gates v. Salmon , 35 Cal. 576, 95 Am. Dec. 139.....	1182, 1184, 1203
Gates v. Steele , 58 Conn. 316, 18 Am. St. Rep. 268, 20 Atl. 474..	1099
Gatlin v. Kilpatrick , 4 N. C. 147, 6 Am. Dec. 557, 1 Car. Law Rep. 534.....	1076
Gatzmer v. German Roman Catholic etc. Asylum , 147 Pa. St. 313, 23 Atl. 452.....	512
Gause v. Perkins , 56 N. C. (3 Jones Eq.) 177, 69 Am. Dec. 728, 730.....	822, 823, 826, 828, 829, 845, 847
Gay v. Hancock , 1 Rand. (Va.) 72.....	567
Gay v. Havermale , 27 Wash. 390, 67 Pac. 804.....	1439
Gay v. Parpart , 106 U. S. 679, 690, 1 Sup. Ct. 456, 465, 27 L. ed. 256.....	16, 1215
Gayle v. Johnson , 80 Ala. 388.....	105, 1187, 1203
Gaylord v. Fort Wayne etc. R. Co. , 6 Biss. 286, Fed. Cas. No. 5284.....	324, 325, 329
Gaynor v. Blewett , 82 Wis. 313, 33 Am. St. Rep. 47, 52 N. W. 313.....	181
Gebb v. Rose , 40 Md. 387.....	1147

Gee v. Pritchard , 2 Swanst. 402.....	989
Geer v. Horton , 159 Mass. 259, 34 N. E. 269.....	1421
Geers v. Scott (Tex. Civ. App.), 33 S. W. 587.....	1119
Geery v. Geery , 63 N. Y. 252.....	1432, 1434
Geiser Mfg. Co. v. Chewing , 52 W. Va. 523, 44 S. E. 193.....	1449
Geist v. City of St. Louis , 156 Mo. 643, 79 Am. St. Rep. 545, 57 S. W. 766.....	1422
General Electric Co. v. New England Electric Co. , 123 Fed. 310..	980
General Electric Co. v. Re-new Lamp Co. , 121 Fed. 164.....	990
General Electric R. Co. v. Chicago etc. Co. , 184 Ill. 588, 56 N. E. 963.....	774, 874
General Ins. Co. v. United States Ins. Co. , 10 Md. 517, 69 Am. Dec. 174.....	1400, 1401
Gent v. Harrison, Johns . 517.....	815
George v. Central R. R. & B. Co. , 101 Ala. 607, 14 South. 752....	548
George v. Dean , 47 Tex. 73.....	742
George v. Derby Lumber Co. , 81 Miss. 725, 33 South. 496.....	567
George v. Nowlan , 38 Or. 537, 64 Pac. 1.....	1119
George v. Peckham (Neb.) 103 N. W. 664.....	932
George v. St. Louis Cable & W. R. Co. , 44 Fed. 117.....	408, 1424
George v. Williamson , 26 Mo. 190, 72 Am. Dec. 203.....	1447
Geo. A. Macbeth Co. v. Lippincott Glass Co. , 54 Fed. 167.....	983
George Jonas Glass Co. v. Glass Blowers' Assn. , 64 N. J. Eq. 644, 54 Atl. 565.....	1010, 1011, 1022
Georges Creek etc. Co. v. Detmold , 1 Md. Ch. 371.....	807
Georgetown v. Alexandria etc. Co. , 12 Pet. 91, 9 L. ed. 1012	932, 973
Georgia v. Brailsford , 2 Dall. 402, 1 L. ed. 433.....	483
Georgia v. Jesup , 106 U. S. 458, 464, 1 Sup. Ct. 363, 27 L. ed. 216	309, 318
Georgia v. Stanton , 6 Wall. 50, 18 L. ed. 721.....	579
Georgia Chemical etc. Co. v. Colquitt , 72 Ga. 172.....	927
Georgia Chem. Works v. Cartledge , 77 Ga. 547, 4 Am. St. Rep. 96.....	1401
Georgia Pac. R. Co. v. Brooks , 66 Miss. 583, 6 South. 467.....	1161
Gerard v. Buckley , 137 Mass. 475.....	1191
Gerard v. Gateau , 84 Ill. 121, 25 Am. Rep. 438.....	1526
Gerding v. East Tennessee L. Co. , 185 Mass. 380, 70 N. E. 206	443, 446
Gere v. Dibble , 17 How. Pr. 31.....	290, 1408
Gerety v. Donahue , 8 Kan. App. 175, 55 Pac. 476.....	1419
Gerkins v. Kentucky Salt Co. , 100 Ky. 734, 66 Am. St. Rep. 370, 39 S. W. 444.....	803
Gerlach v. Brandreth , 34 App. Div. 197, 54 N. Y. Supp. 479.....	619
Germain v. Wilgus , 67 Fed. 597, 29 U. S. App. 564, 14 C. C. A. 561	975, 978
German v. Chapman , L. R. 7 Ch. D. 271.....	510
German Alliance Ins. Co. v. Van Cleve , 191 Ill. 410, 61 N. E. 94.....	681
German Evangelical Luth. Church v. Maschop , 10 N. J. Eq. 57..	564
German Exchange Bank v. Commissioners , 6 Abb. N. C. (N. Y.) 394.....	93
German Fire Ins. Co. v. Perry , 45 Ill. App. 197.....	1094
German Mut. Fire Ins. Co. v. Schwarzwald (N. J. Eq.), 44 Atl. 769.....	554
German Nat. Bank v. First Nat. Bk. , 55 Neb. 86, 75 N. W. 531..	1417
German Nat. Bank v. Kimball , 103 U. S. 732, 26 L. ed. 469..	658, 662

German Sav. Bank v. Friend, 61 N. Y. Super. Ct. (29 J. & S.) 400, 20 N. Y. Supp. 434.....	93
Gerry v. Stimson, 60 Me. 186.....	1226, 1238
Gessner v. Palmateer, 89 Cal. 89, 24 Pac. 608, 26 Pac. 789, 13 L. R. A. 187.....	1386
Geurkink v. City of Petaluma, 112 Cal. 306, 44 Pac. 570.....	786
Gibbins v. Adamson, 44 Kan. 203, 24 Pac. 51.....	693, 696
Gibbons v. Pemberton, 101 Mich. 397, 45 Am. St. Rep. 417, 59 N. W. 663.....	1434
Gibbs v. David, L. R. 20 Eq. 373.....	203
Gibbs v. Green, 54 Miss. 592.....	580
Gibbs v. Morgan (Idaho), 72 Pac. 733.....	213, 225, 238
Gibert v. Washington City etc. R. Co., 33 Gratt. 586.....	398
Giblan v. National Amal. Labor Union, [1903] 2 K. B. 600.....	1024, 1027, 1038
Gibson v. Brown, 214 Ill. 330, 73 N. E. 578.....	1333
Gibson v. Crehore, 3 Pick. 475.....	1169, 1170
Gibson v. Goldthwaite, 7 Ala. 281, 42 Am. Dec. 592.....	69, 70, 82, 84, 89
Gibson v. Herriott, 55 Ark. 85, 29 Am. St. Rep. 17, 17 S. W. 589	43, 57, 58, 62
Gibson v. McClay, 47 Neb. 900, 66 N. W. 851.....	1129
Gibson v. Seagrim, 20 Beav. 614.....	1390
Giffard v. Hort, 1 Schoales & L. 407.....	1207
Giffard v. Williams, L. R. 5 Ch. 546.....	1200
Gifford v. Corrigan, 117 N. Y. 257, 15 Am. St. Rep. 508, 22 N. E. 756, 6 L. R. A. 610.....	1478
Gifford v. Morrison, 37 Ohio St. 502, 41 Am. Rep. 537.....	1119
Gifford v. Rising, 59 Hun. 42, 12 N. Y. Supp. 428.....	377
Gilbaugh v. West etc. Co., 64 N. J. Eq. 27, 53 Atl. 289.....	931
Gilbert v. Block, 51 Ill. App. 516.....	113, 261, 264, 268, 271
Gilbert v. Dickerson, 7 Wend. 449, 22 Am. Dec. 592.....	1185
Gilbert v. Finch, 173 N. Y. 455, 93 Am. St. Rep. 623, 66 N. E. 133.....	1497
Gilbert v. Hewetson, 79 Minn. 326, 79 Am. St. Rep. 486, 82 N. W. 655.....	442, 445
Gilbert v. Mickle, 4 Sandf. Ch. 357.....	876
Gilbert v. Sleeper, 71 Cal. 290, 12 Pac. 172.....	1335
Gilbert v. Stockman, 81 Wis. 602, 29 Am. St. Rep. 922, 51 N. W. 1076, 52 N. W. 1045.....	1435
Gilchrist v. Helena etc. Co., 49 Fed. 519.....	1471
Gildersleeve v. New Mexico Min. Co., 161 U. S. 573, 582, 16 Sup. Ct. 663, 40 L. ed. 812.....	43
Gildersleeve v. Overstolz, 97 Mo. App. 303, 71 S. W. 371.....	843
Gile v. Stegner (Minn.), 100 N. W. 101.....	588
Giles v. Dunbar, 181 Mass. 22, 62 N. E. 985.....	498, 1290
Giles v. Harris, 189 U. S. 475, 23 Sup. Ct. 639, 47 L. ed. 909....	579
Gilfillan v. Shattuck, 142 Cal. 27, 75 Pac. 646.....	829
Gilford v. Babies' Hospital etc. N. Y., 21 Abb. N. C. 159, 1 N. Y. Supp. 448.....	871
Gilkey v. Merrill, 67 Wis. 459, 30 N. W. 733.....	754
Gill v. Balis, 72 Mo. 424.....	360
Gill v. Bradley, 21 Minn. 15.....	1335
Gill v. Pelkey, 54 Ohio St. 348, 43 N. E. 991.....	1083
Gill v. Wells, 59 Md. 492, 495.....	1321, 1322, 1323
Gillespie v. Allison, 117 N. C. 512, 23 S. E. 438.....	1217
Gillespie v. Cooper, 36 Neb. 775, 55 N. W. 302.....	1437, 1438
Gillespie v. Gouly, 120 Cal. 515, 52 Pac. 816.....	1244

Gillespie v. Moon, Johns. Ch. 586, 602.....	1149
Gillett v. Bate, 86 N. Y. 87.....	1414
Gillett v. Moody, 3 N. Y. 479.....	372
Gilliam v. Esselman, 5 Sneed (Tenn.), 86.....	1490
Gilliam v. McCormack, 85 Tenn. 597, 4 S. W. 521.....	1398, 1401
Gillian v. Norton, 33 How. Pr. 373.....	513, 514
Gilliek v. Williams, 53 Neb. 146, 73 N. W. 540.....	850
Gilliland v. Inabuit, 92 Iowa, 46, 60 N. W. 211.....	30
Gillingham v. Beddow, [1900] 2 Ch. 242.....	526
Gillott v. Esterbrook, 48 N. Y. 374, 8 Am. Rep. 553, 47 Barb. 455.....	990
Gilman v. Greenpoint Sugar Co., 4 Lans. 483.....	245
Gilman v. Ketcham, 84 Wis. 60, 36 Am. St. Rep. 899, 54 N. W. 395, 23 L. R. A. 52.....	438, 446, 447
Gilman v. Sheboygan etc. Co., 40 Wis. 653.....	836
Gilman v. Van Brunt, 29 Minn. 271, 13 N. W. 125.....	1235
Gilmer v. Mobile & M. R. Co. 79 Ala. 569, 58 Am. Rep. 623.....	506
Gilmore v. Fox, 10 Kan. 509.....	695, 696
Gilmore v. Ham, 142 N. Y. 1, 40 Am. St. Rep. 554, 36 N. E. 826.....	1532
Gilmore v. Herrick, 93 Fed. 525.....	337, 339, 343
Gilreath v. Trust Co., 121 Ala. 204, 25 South. 581.....	261, 271, 274
Gilroy's Appeal, 100 Pa. St. 5.....	590
Giltenan v. Lemert, 13 Kan. 476.....	1245
Ginn v. Brown, 14 R. I. 524.....	1430
Gitt v. Watson, 18 Mo. 274.....	17
Given, Appeal of, 121 Pa. St. 260, 6 Am. St. Rep. 795, 15 Atl. 468.....	1086, 1099
Givens v. Carroll, 40 S. C. 413, 42 Am. St. Rep. 889, 18 S. E. 1030.....	1501, 1508, 1510
Gladdon v. Stoneman, 1 Madd. (86) 141, note.....	165
Glamorgan Coal Co. v. S. Wales Miners' Federation, [1903] 2 K. B. 595.....	1010, 1023
Glascock v. Hamilton, 62 Tex. 143.....	1488
Glaser v. Priest, 29 Mo. App. 1.....	91, 98
Glasgow v. St. Louis, 107 Mo. 198, 17 S. W. 743.....	606, 786
Glass v. Pullen, 6 Bush, 346.....	1404
Glassbrenner v. Groulik, 110 Wis. 402, 85 N. W. 962.....	535
Glassman v. O'Donnell, 6 Utah, 446, 451, 24 Pac. 537.....	1251
Glastenbury v. McDonald's Admr., 44 Vt. 453.....	1089
Glaze v. Bogle, 97 Ga. 340, 22 S. E. 969.....	578
Gleason v. Waukesha County, 103 Wis. 225, 79 N. W. 249.....	755, 756
Glenn v. Wallace, 4 Strob. Eq. (S. C.) 149, 53 Am. Dec. 657.....	1476
Glenn v. Williams, 60 Md. 93.....	1470
Glenn v. West (Va.), 49 S. E. 671.....	1230, 1233
Glide v. Superior Court (Cal.), 81 Pac. 225.....	602
Globe Mut. L. Ins. Co. v. Reals, 79 N. Y. 202.....	1155
Globe-Wernicke Co. v. Brown, 121 Fed. 185.....	994, 995
Glocke v. Glocke, 113 Wis. 303, 89 N. W. 118, 57 L. R. A. 458.....	1159
Glock v. Howard Colony Co., 123 Cal. 1, 10, 69 Am. St. Rep. 17, 55 Pac. 713, 43 L. R. A. 199.....	1342
Gloninger v. Hazard, 42 Pa. St. 389.....	1517
Glorieux v. Schwartz, 53 N. J. Eq. (8 Dick.) 231, 28 Atl. 470, 34 Atl. 1134.....	1424
Glos v. Archer, 214 Ill. 74, 73 N. E. 382.....	1234
Glos v. Beckman, 183 Ill. 158, 55 N. E. 636.....	1234
Glos v. Furman, 164 Ill. 585, 45 N. E. 1019.....	1226

Glos v. Goodrich, 175 Ill. 20, 51 N. E. 643.....	1234
Glos v. Kemp, 192 Ill. 72, 61 N. E. 473.....	1232, 1234
Glos v. Randolph, 138 Ill. 268, 27 N. E. 941.....	1229
Glos v. Wilson, 198 Ill. 44, 64 N. E. 734.....	1290
Gloucester Isinglass & Glue Co. v. Russia Cement Co., 154 Mass. 92, 26 Am. St. Rep. 214, 27 N. E. 1005, 12 L. R. A. 563.....	1265
Glover v. Hargadine-McKittrick Dry-Goods Co., 62 Neb. 483, 87 N. W. 170.....	1410
Glover v. Hembree, 82 Ala. 324, 8 South. 251.....	566
Glover v. Thayer, 101 Ga. 824, 29 S. E. 36.....	338, 339
Gloversville v. Johnstown, G. & H. Horse R. Co., 66 Hun, 627, 21 N. Y. Supp. 146.....	533
Glucose Refining Co. v. American Glucose etc. Co. (N. J. Eq.), 56 Atl. 861.....	998
Glucose Refining Co. v. Chicago, 138 Fed. 209.....	633, 635
Glyn v. Duesbury, 11 Sim. 139, 147.....	65, 73, 74
Gobeille v. Meunier, 21 R. I. 103, 41 Atl. 1001.....	830
G. Ober & Sons Co. v. Keating 77 Md. 100, 26 Atl. 501.....	1399
Godbold v. Lambert, 8 Rich. Eq. (S. C.), 155, 70 Am. Dec. 192.....	1420
Goddard v. American Queen, 27 Misc. Rep. 482, 59 N. Y. Supp. 46.....	498
Goddard v. Jeffreys, 51 L. J. Ch. 57.....	1303, 1304
Goddard v. Leech, Wright, 476.....	88
Goddard v. Stiles, 90 N. Y. 199.....	377
Goddard v. Stockman, 74 Ind. 400.....	688
Godden v. Kimmell, 99 U. S. 201, 210, 25 L. ed. 431.....	36, 37
Godding v. Decker, 3 Colo. App. 198, 32 Pac. 832.....	1165
Godfrey v. Godfrey, 17 Ind. 6, 79 Am. Dec. 448.....	1198
Godfrey v. Littel, 1 Russ. & M. 59, 2 Russ. & M. 630.....	1176, 1177
Godfrey v. White, 43 Mich. 171, 5 N. W. 243.....	1534
Godfrey v. White, 60 Mich. 443, 1 Am. St. Rep. 537, 27 N. W. 593.....	1183, 1185, 1186, 1199
Godillot v. Harris, 81 N. Y. 263.....	990
Goding v. Railroad Co., 94 Me. 542, 545, 48 Atl. 114.....	1316
Goff v. Cole, 71 Miss. 46, 13 South. 870.....	1200
Goff v. Kelly, 74 Fed. 327.....	1424
Goff v. Supervisors of Outagamie County, 43 Wis. 55.....	749, 751
Gogebie Ins. Co. v. Iron Chief Mfg. Co., 78 Wis. 427, 23 Am. St. Rep. 417, 47 N. W. 726.....	1458
Gold & Stock Tel. Co. v. Todd, 17 Hun (N. Y.), 548.....	531
Goldbacher v. Eggers, 38 Misc. Rep. 36, 76 N. Y. Supp. 881, 886, affirmed in 84 N. Y. Supp. 1127.....	855, 860
Goldberg v. Richards, 26 N. Y. Supp. 335, 5 Misc. Rep. 419.....	152
Goldberg v. Taylor, 2 Utah, 486.....	1248
Goldie Const. Co. v. Rich Const. Co. (Mo. App.), 86 S. W. 587.....	1117
Goldman v. Gillespie, 43 La. Ann. 83, 8 South. 880.....	593
Goldman v. Rosenberg, 116 N. Y. 78, 15 Am. St. Rep. 410, 22 N. E. 397.....	1389, 1390
Goldsboro etc. Co. v. Hines, 126 N. C. 254, 35 S. E. 458.....	942
Goldsmid v. Tunbridge Wells Imp. Commrs., L. R. 1 Eq. 161.....	50, 863, 965
Goldsmith v. Fletcheimer, 16 Ky. Law Rep. 433, 28 S. W. 211.....	163
Goldsworthy v. Boyle, 175 Pa. St. 246, 34 Atl. 630.....	591
Goldthwaite v. Janney, 102 Ala. 431, 48 Am. St. Rep. 56, 15 South. 560, 28 L. R. A. 161.....	1535
Goodall v. Crofton, 33 Ohio St. 271, 31 Am. Rep. 535.....	907, 923

<i>Goodburn v. Stevens</i> , 1 Md. Ch. 420.....	1170
<i>Goode v. Crow</i> , 51 Mo. 214.....	1217
<i>Goode v. Riley</i> , 153 Mass. 585, 28 N. E. 228.....	1146, 1148
<i>Goodenow v. Ewer</i> , 16 Cal. 461, 76 Am. Dec. 540.....	1523
<i>Goodess v. Williams</i> , 2 Younge & C., 595.....	1207
<i>Goodheart v. Mining Co.</i> , 8 N. J. Eq. 73, 77.....	243
<i>Goodhue v. Daniels</i> , 54 Iowa, 19, 6 N. W. 129.....	182
<i>Goodin v. Cincinnati & W. Canal Co.</i> , 18 Ohio St. 169, 98 Am. Dec. 95.....	787
<i>Goodman v. Jedidjah Lodge</i> , 67 Md. 117, 9 Atl. 13, 13 Atl. 627..	212
<i>Goodman v. Kopperl</i> , 169 Ill. 136, 48 N. E. 172.....	140
<i>Goodman v. Maleom</i> , 5 Kan. App. 285, 48 Pac. 439.....	204
<i>Goodman v. Whitcomb</i> , 1 Jacob & W. 589.....	143, 144
<i>Goodnough v. Gatch</i> , 37 Or. 5, 60 Pac. 383.....	346
<i>Goodnough v. Powell</i> , 23 Or. 525, 32 Pac. 396.....	733, 734, 735
<i>Goodrich v. Georgia etc. Co.</i> , 115 Ga. 340, 11 S. E. 659.....	914
<i>Goodrich v. Hicks</i> , 19 Tex. Civ. App. 528, 48 S. W. 798.....	1419
<i>Goodrich v. Lathrop</i> , 94 Cal. 56, 28 Am. St. Rep. 91, 29 Pac. 329.....	1162, 1163
<i>Goodson v. Richardson</i> , L. R. 9 Ch. App. 221.....	830, 853
<i>Goodwin v. Kelley</i> (Ind. App.), 70 N. E. 832.....	1310
<i>Goodyear Co. v. Goodyear Rubber Co.</i> , 128 U. S. 598, 9 Sup. Ct. 166, 32 L. ed. 535.....	991
<i>Gophir Diamond Co. v. Wood</i> , [1902] 1 Ch. 950.....	525
<i>Gordon v. Johnson</i> , 186 Ill. 18, 57 N. E. 790.....	37, 59
<i>Gordan v. Lemp</i> , 7 Idaho, 677, 65 Pac. 444.....	1408
<i>Gordon v. Lowell</i> , 21 Me. 251.....	1412, 1447
<i>Gordon v. Newman</i> , 62 Fed. 686, 10 C. C. A. 587.....	404
<i>Gore v. Royse</i> , 56 Kan. 771, 44 Pac. 1053.....	1404
<i>Gorham v. Gorham</i> , 3 Barb. Ch. 41.....	1204
<i>Gorham v. Sayles</i> , 23 R. I. 449, 50 Atl. 848.....	41
<i>Goring v. McTaggart</i> , 92 Ind. 200.....	690
<i>Gorman v. Tidholm</i> , 94 Ill. App. 371.....	609
<i>Gorsuch v. Thomas</i> , 57 Md. 334.....	1077, 1078
<i>Gorton v. Tiffany</i> , 14 R. I. 95.....	946
<i>Goshen Woolen Mills Co. v. City Nat. Bank</i> , 150 Ind. 279, 49 N. E. 154.....	239
<i>Gotthelf v. Stranahan</i> , 138 N. Y. 345, 352, 34 N. E. 286, 20 L. R. A. 455.....	1319
<i>Gottlieb v. Miller</i> , 154 Ill. 44, 39 N. E. 992.....	374
<i>Gottschalk v. Stein</i> , 69 Md. 51, 13 Atl. 625.....	1263, 1267
<i>Gotzian v. Shakman</i> , 89 Wis. 52, 46 Am. St. Rep. 820, 61 N. W. 304.....	1400
<i>Goudy v. Shank</i> , 8 Ohio, 415.....	1196
<i>Gough v. Crane</i> , 3 Md. Ch. 119.....	1257
<i>Gould v. Eaton</i> , 117 Cal. 539, 49 Pac. 577, 38 L. R. A. 181.....	968
<i>Gould v. Glass</i> , 120 Ga. 50, 47 S. E. 505.....	1144
<i>Gould v. Mansfield</i> , 103 Mass. 408, 4 Am. Rep. 573.....	1260
<i>Gould v. Murch</i> , 70 Me. 288, 289, 35 Am. Rep. 325.....	1390
<i>Gould v. Sternburg</i> , 105 Ill. 488.....	1245
<i>Gould v. Womaek</i> , 2 Ala. 83.....	1257
<i>Goulding v. Bain</i> , 4 Sandf. 716.....	143
<i>Gourand v. Trust</i> , 6 Thomp. & C. 133, 3 Hun, 627.....	990
<i>Gourdin v. Trenholm</i> , 25 S. C. 362.....	1492
<i>Gove v. City of Biddeford</i> , 85 Me. 393, 27 Atl. 264.....	1278
<i>Governor v. McEwen</i> , 5 Humph. 241.....	1518

Gowdy v. Green, 69 Fed. 865.....	579
Gower v. Andrew, 59 Cal. 119, 43 Am. Rep. 242.....	489
Gowland v. De Faria, 17 Ves. 20.....	1162
Grace v. Curtiss, 3 Misc. Rep. 558, 28 N. Y. Supp. 321..	260, 267, 273
Graff v. Felix, 200 Pa. St. 137, 49 Atl. 758.....	596
Graff v. Portland Town & Mineral Co., 12 Colo. App. 106, 54 Pac. 854.....	48
Grafton & B. R. Co. v. Buckhannon & N. R. Co. (W. Va.), 49 S. E. 32.....	769
Grafton & G. R. Co. v. Davisson, 45 W. Va. 12, 72 Am. St. Rep. 799, 29 S. E. 1028.....	1106
Graham v. Carr, 133 N. C. 449, 45 S. E. 847.....	409, 426
Graham v. Citizens' Nat. Bank, 45 W. Va. 701, 32 S. E. 245....	1101
Graham v. Graham, 8 Bush. 334.....	1216
Graham v. Herlong (Fla.), 39 South. 111.....	1263
Graham v. La Crosse etc. R. R. Co., 102 U. S. 148, 26 L. ed. 106..	1458
Graham v. McCampbell, Meigs, 52, 33 Am. Dec. 126.....	1386
Graham v. Roberts, 1 Head, 56.....	1076, 1115
Graham v. St. Chas. Street Ry. Co., 47 La. Ann. 214, 49 Am. St. Rep. 366, 16 South. 806.....	1013, 1030
Graham v. Staggs, 2 Paige, 321.....	1077
Graham v. Womack, 82 Mo. App. 618.....	843
Graham Button Co. v. Spielman, 50 N. J. Eq. 120, 24 Atl. 571....	375
Grammett v. Gingrass, 77 Mich. 369, 43 N. W. 999.....	1299
Grand Castle etc. v. Bridgeton Castle (N. J. Eq.), 40 Atl. 849..	553
Grand Chute v. Winegar, 15 Wall. 373, 21 L. ed. 174.....	1156
Grand Com. etc. v. Stewart, 177 Mass. 235, 58 N. E. 689.....	557
Grand Haven v. Grand Haven Waterworks Co., 99 Mich. 106, 57 N. W. 1075.....	1157
Grandin v. First Nat. Bank (Neb.), 98 N. W. 70.....	1434
Grandin v. Le Bar, 2 N. D. 206, 50 N. W. 151.....	262, 268, 276
Grand Island & M. C. R. Co. v. Dawes County, 62 Neb. 44, 86 N. W. 834.....	715
Grand Junction etc. Co. v. Shugar, L. R. 6 Ch. D. 483.....	971
Grand Lodge A. O. U. W. v. Graham, 96 Iowa, 592, 65 N. W. 837, 31 L. R. A. 133.....	50, 996
Grand Rapids v. Weiden, 97 Mich. 82, 56 N. W. 233.....	915
Grand Rapids School Furn. Co. v. Haney School Furn. Co., 92 Mich. 558, 31 Am. St. Rep. 617, 52 N. W. 1009, 16 L. R. A. 721.....	1030, 1097
Grand Trunk Ry. Co. v. Central Vt. R. Co., 88 Fed. 620.....	419
Grand Trunk Ry. Co. v. Central Vt. R. Co., 90 Fed. 163.....	423
Grand View Bldg. Assn. v. Northern Assur. Co. (Neb.), 102 N. W. 246.....	1145
Grannis v. Board of Commissioners, 81 Minn. 55, 83 N. W. 495.....	610, 629
Grant v. Bell (R. I.), 58 Atl. 951.....	1159
Grant v. Buckner, 49 La. Ann. 668, 21 South. 580.....	367
Grant v. Buckner, 172 U. S. 232, 19 Sup. Ct. 163, 43 L. ed. 430....	368
Grant v. Cole, 23 Wash. 542, 63 Pac. 263.....	1133
Grant v. Crow, 47 Iowa, 632.....	763
Grant v. Grant, 63 Conn. 530, 38 Am. St. Rep. 379, 29 Atl. 15....	1357
Grant v. Phoenix Mut. L. Ins. Co., 121 U. S. 105, 7 Sup. Ct. 841, 30 L. ed. 905.....	167
Grantham v. Gossett, 182 Mo. 651, 81 S. W. 899.....	1261
Grantham v. Lucas, 15 W. Va. 425.....	190

Graver v. Faurot , 76 Fed. 257, 22 C. C. A. 156.....	1104
Graves v. Jasper School Township , 2 S. D. 414, 50 N. W. 904....	611
Graves v. Key City Gas Co. , 83 Iowa, 714, 50 N. W. 283.....	532
Graves v. Moore Co. Commissioners , 135 N. C. 49, 47 S. E. 134..	724
Graves v. Smith , 87 Ala. 450, 13 Am. St. Rep. 60, 6 South. 308, 5 L. R. A. 298.....	942
Graves v. Smith , 4 Tex. Civ. App. 537, 23 S. W. 603.....	1482
Gray v. Bremer , 122 Iowa, 110, 97 N. W. 991.....	515
Gray v. Building Trades Council , 91 Minn. 171, 103 Am. St. Rep. 477, 97 N. W. 663, 63 L. R. A. 753.....	1029, 1013, 1030, 1035
Gray v. Chiswell , 9 Ves. 118.....	1537
Gray v. Covert , 25 Ind. App. 561, 81 Am. St. Rep. 117, 58 N. E. 731.....	445, 446
Gray v. Dougherty , 25 Cal. 266, 280.....	1331
Gray v. Green , 142 N. Y. 316, 40 Am. St. Rep. 596, 37 N. E. 124..	1532
Gray v. Kerr , 46 Ohio St. 652, 23 N. E. 136.....	1532
Gray v. Lewis , 94 N. C. 392.....	356, 360
Gray v. Manhattan R. Co. , 128 N. Y. 499, 28 N. E. 498.....	779, 781, 945, 952
Gray v. Palmer , 9 Cal. 116.....	1534
Gray v. Richmond Bicycle Co. , 167 N. Y. 348, 60 N. E. 663.....	1127
Gray v. Stiles , 6 Okla. 455, 49 Pac. 1083.....	730, 732
Gray v. Taylor (N. J.) , 44 Atl. 668.....	381, 382
Graybill v. Brugh , 89 Va. 895, 37 Am. St. Rep. 894, 17 S. E. 558, 21 L. R. A. 133.....	1297, 1369
Graydon v. Church , 7 Mich. 36.....	439
Graydon v. Graydon , McMull. Eq. 63.....	1210
Gray Lumber Co. v. Gaskin (Ga.) , 50 S. E. 164.....	832
Greason v. Keteltas , 17 N. Y. 491.....	1275
Great Falls Mfg. Co. v. Worster , 23 N. H. 462.....	32
Great Hive of L. of M. v. Supreme Hive etc. (Mich.) , 97 N. W. 779.....	996
Greathouse v. Greathouse , 46 W. Va. 21, 32 S. E. 994.....	808
Great Northern etc. Co. v. Clarence Ry. , 1 Coll. C. C. 507.....	914
Greatrex v. Greatrex , 1 De Gex & S. 692.....	1070
Great Western Min. & Mfg. Co. v. Harris (May 29, 1905) , 25 Sup. Ct. 770.....	440
Great Western Min. Co. v. Woodmas of Alston Min. Co. , 12 Colo. 46, 13 Am. St. Rep. 204, 20 Pac. 771.....	1121
Great Western Ry. Co. v. Birmingham Ry. Co. , 2 Phill. Ch. 602..	483
Great Western Ry. Co. v. Oxford etc. Ry. Co. , 3 De Gex, M. & G. 341.....	543
Greedup v. Franklin County , 30 Ark. 101.....	647, 648, 666
Greeley v. De Cottes , 24 Fla. 475, 5 South. 239.....	1143
Greeley v. Provident Sav. Bank , 98 Mo. 458, 11 S. W. 980.....	322
Green v. Arnold , 11 R. I. 364, 23 Am. Rep. 466.....	1195, 1211
Green v. Bookhart , 19 S. C. 466.....	361
Green v. City & Suburban Ry. Co. , 78 Md. 294, 44 Am. St. Rep. 288, 28 Atl. 626.....	770
Green v. Coast Line R. Co. , 97 Ga. 15, 24 S. E. 814, 54 Am. St. Rep. 379, 33 L. R. A. 806.....	424
Green v. Covillaud , 10 Cal. 317, 70 Am. Dec. 725.....	1337, 1338
Green v. Dodge , 6 Ohio, 80, 25 Am. Dec. 736.....	1109
Green v. Finin , 35 Conn. 178.....	1335, 1349
Green v. French , 4 Ban. & A. 169, Fed. Cas. No. 5757.....	982

Green v. Glynn, 71 Ind. 336.....	1250
Green v. Groves, 109 Ind. 519, 10 N. E. 401.....	1350
Green v. Ivey (Fla.), 33 South. 711.....	1003
Green v. Jones, 76 Me. 563.....	1351
Green v. King, 2 W. Bl. 121.....	1189
Green v. Lake, 54 Miss. 540, 28 Am. Rep. 378.....	883, 916
Green v. Levin, L. R. 13 Ch. D. 589, 599.....	1340
Green v. Mills, 69 Fed. 852, 16 C. C. A. 516, 30 L. R. A. 90....	579
Green v. Oaks, 17 Ill. 249.....	871, 930
Green v. Putnam, 1 Barb. 500.....	1182, 1206, 1211, 1212
Green v. Salmon, 23 Ky. Law Rep. 517, 63 S. W. 270....	1437, 1438
Green v. Smith, 1 Atk. 572.....	1377
Green v. Stone, 54 N. J. Eq. 387, 55 Am. St. Rep. 577, 34 Atl. 1099.....	1140, 1148
Green v. Western Nat. Bank, 86 Md. 279, 38 Atl. 131.....	1499
Greenbaum v. Austrian, 70 Ill. 591.....	1381
Green Bay & M. Canal Co. v. Outagamie County, 76 Wis. 587, 45 N. W. 536.....	750, 752
Greene v. A. & W. Sprague Mfg. Co., 52 Conn. 330.....	374
Greene v. Anderson, 102 Ky. 216, 19 Ky. Law Rep. 1187, 43 S. W. 195.....	1487
Greene v. Creighton, 7 R. I. 1.....	504
Greene v. Dixon, 119 Ala. 346, 72 Am. St. Rep. 920, 24 South. 422.....	1139
Greene v. Graham, 5 Ohio, 264.....	1534
Greene v. Greene, 2 Gray, 361, 61 Am. Dec. 454.....	1103
Greene v. Keene, 14 R. I. 388, 51 Am. Rep. 400.....	1414
Greene v. Knox, 175 N. Y. 432, 67 N. E. 910.....	593
Greene v. Munford, 4 R. I. 313.....	67, 75, 82
Greene v. Munford, 5 R. I. 472, 73 Am. Dec. 79.....	733
Greene v. Nunnemacher, 36 Wis. 50.....	931, 966
Greene v. Starnes, 1 Heisk. 582.....	1426
Greenfield v. United States Mtg. Co., 133 Fed. 784.....	1226
Greenhaw v. Combs (Ark.), 85 S. W. 768.....	1140
Greenhill v. Greenhill, 2 Vern. 679.....	1379
Greenhood v. MacDonald, 183 Mass. 342, 67 N. E. 336.....	704
Greenleaf v. Francis, 18 Pick. 117.....	898
Greenlee v. Gaines, 13 Ala. 198, 48 Am. Dec. 49.....	1087
Green Mountain Stock Ranch Co. v. Savage, 15 Mont. 189, 38 Pac. 940.....	714
Greenwaldt v. May, 127 Ind. 511, 22 Am. St. Rep. 660, 27 N. E. 158.....	1094
Greenway v. Thomas, 14 Ill. 271.....	1434
Greenwood Loan & G. Co. v. Childs, 67 S. C. 251, 45 S. E. 167....	168
Greer v. Hale, 95 Va. 533, 64 Am. St. Rep. 814, 28 S. E. 371.....	1086
Greer v. Van Meter, 54 N. J. Eq. 270, 33 Atl. 794.....	945
Greer v. Payne, 4 Kan. App. 153, 46 Pac. 190.....	557
Gregg v. Massachusetts Med. Soc., 111 Mass. 185, 15 Am. Rep. 24.....	557
Gregg v. Mercantile Trust Co., 109 Fed. 220, 48 C. C. A. 318....	418, 420, 422
Gregg v. Metropolitan Trust Co., 197 U. S. 183, 25 Sup. Ct. 415	414, 415
Gregg v. Sanford, 65 Fed. 151, 12 C. C. A. 525.....	654, 660
Gregg v. Swindall, 67 Ala. 187.....	1232
Gregory v. Bartlett, 55 Ark. 30, 17 S. W. 344.....	1501

Gregory v. Ford, 14 Cal. 138, 73 Am. Dec. 639.....	1120, 1135
Gregory v. Gregory, 1 Jones & S. (33 N. Y. Super. Ct.) 1....	154, 155
Gregory v. Gregory, 69 N. C. 522.....	1182, 1216
Gregory v. Hay, 3 Cal. 322.....	808
Gregory v. High, 29 Ind. 527.....	1182
Gregory v. Lamb, 101 Ky. 727, 42 S. W. 339.....	1428
Gregory v. Mighell, 18 Ves. 328.....	1349
Gregory v. Nelson, 41 Cal. 278.....	941, 953
Gregory v. Patchett, 33 Beav. 595, 602.....	544
Gregory v. Tingley, 18 Neb. 319, 25 N. W. 88.....	1259
Greiner v. Klein, 28 Mich. 17.....	1206
Greiner-Kelly Drug Co. v. Truett, 97 Tex. 377, 79 S. W. 4.....	1084
Grenell v. Ferry, 110 Mich. 262, 68 N. W. 144.....	1433
Gresham v. Ware, 79 Ala. 192.....	1491
Grether v. Wright, 75 Fed. 742, 23 C. C. A. 498.....	661
Grey v. Greenville & H. Ry. Co., 60 N. J. Eq. 153, 46 Atl. 636...	540
Grey v. New York etc. Co., 56 N. J. Eq. 463, 40 Atl. 21.....	930, 961, 962
Grey v. Paterson (N. J.), 45 Atl. 995, 48 L. R. A. 717.....	908
Grey v. Pearkes, 18 Ves. Jr. 197.....	1415
Grey, Attorney-General, v. Mayor etc. Paterson, 58 N. J. Eq. 1, 42 Atl. 749.....	965
Grey (Attorney-General) v. Mayor etc. of Paterson, 60 N. J. Eq. 385, 83 Am. St. Rep. 642, 45 Atl. 994, 48 L. R. A. 717.....	926, 928, 966, 967
Greyson v. Riddle, cited in 7 Ves. 273.....	1334
Gridler v. American Freehold Land M. Co., 99 Ala. 281, 42 Am. St. Rep. 58, 12 South. 775.....	1163
Gridler v. Payne, 9 Dana (Ky.), 188.....	1503
Gridley v. Garrison, 4 Paige, 647.....	1086
Griffies v. Griffies, 11 Week. Rep. 943.....	1215
Griffin v. Fries, 23 Fla. 173, 11 Am. St. Rep. 351, 2 South. 266	1090, 1139
Griffin v. Griffin, 33 Ga. 107.....	1193
Griffin v. Griffin (S. C.), 49 S. E. 561.....	1501
Griffin v. Long Island R. Co., 102 N. Y. 449, 7 N. E. 735.....	365
Griffin v. Thomas, 21 Ga. 198.....	1510
Griffing v. Griffing Iron Co., 96 Fed. 577.....	214
Griffing v. Pintard, 25 Miss. 173.....	1512
Griffith v. Burlingame, 18 Wash. 429, 51 Pac. 1059.....	380
Griffith v. Griffith (Tenn. Ch. App.), 46 S. W. 340.....	1109
Griffith v. Hilliard, 64 Vt. 643, 25 Atl. 427.....	821, 826, 829, 843
Griffith v. Langsdale, 53 Ark. 71, 22 Am. St. Rep. 182, 13 S. W. 733.....	1127
Griffith v. Milwaukee Harvester Co., 92 Iowa, 634, 54 Am. St. Rep. 573, 61 N. W. 243.....	1116
Griffith v. Phillips, 3 Grant Cas. 381.....	17, 1196
Grigg v. Landis, 21 N. J. Eq. 499, 502, 503.....	1337, 1341, 1342
Griggs v. Swindall, 67 Ala. 187.....	1226, 1228
Griggs v. Docter, 89 Wis. 161, 46 Am. St. Rep. 824, 61 N. W. 761, 30 L. R. A. 360.....	1127
Grigsby v. Breckinridge, 2 Bush, 480, 92 Am. Dec. 509.....	987, 989
Grigsby v. Burtnett, 31 Cal. 406.....	826
Grill v. Globe & R. F. I. Co., 67 N. Y. Supp. 253, 55 App. Div. 612.....	62
Grimmett v. Midgett (Tenn. Ch. App.), 57 S. W. 399.....	1439
Gring's Appeal, 89 Pa. St. 336.....	1506

Griswold v. Brega, 160 Ill. 490, 52 Am. St. Rep. 350, 43 N. E. 864, affirming 57 Ill. App. 554.....	895
Griswold v. Hazard, 141 U. S. 260, 11 Sup. Ct. 972, 35 L. ed. 678.	1086
Gross v. Davis, 87 Tenn. 226, 10 Am. St. Rep. 635, 11 S. W. 92..	1489
Gross v. Wieand, 151 Pa. St. 639, 25 Atl. 50.....	564
Grosvenor v. Flint, 20 R. I. 21, 37 Atl. 304.....	1275
Groves v. Sentell, 153 U. S. 465, 14 Sup. Ct. 898, 38 L. ed. 785..	80
Groves v. Webber, 72 Ill. 606.....	1225
Grow v. Seligman, 47 Mich. 607, 41 Am. Rep. 737, 11 N. W. 404.	523
Grubb v. Bayard, 2 Wall. Jr. 81, Fed. Cas. No. 5849.....	1188
Grubb v. Cottrell, 62 Pa. St. 23.....	1483
Guarantee Trust & S. D. Co. v. Delta & Pine Land Co., 104 Fed. 5, 43 C. C. A. 396.....	25, 31, 50, 1230
Guarantee Trust & S. D. Co. v. P. R. etc. R., 69 Conn. 709, 38 Atl. 792, 38 L. R. A. 804.....	450, 453
Guaranty Co. of N. D. v. Hanway, 104 Fed. 369, 373, 44 C. C. A. 312.....	383
Guaranty Trust Co. v. Galveston City R. Co., 107 Fed. 311, 46 C. C. A. 305.....	416
Guaranty Trust Co. v. North Chicago St. R. Co., 130 Fed. 801.....	325, 327
Guardian of Tending Union v. Dawton, [1891] 3 Ch. 265.....	505
Gueraud v. Dandeleit, 32 Md. 561, 3 Am. Rep. 164.....	523
Guernsey v. Powers, 9 Hun. 78.....	154
Guest v. Brooklyn, 69 N. Y. 506.....	1228
Guest v. Reynolds, 68 Ill. 478, 18 Am. Rep. 570.....	902
Guest v. Homfray, 5 Ves. Jr. 820.....	1338
Guethler v. Altmann (1901), 26 Ind. App. 587, 84 Am. St. Rep. 313, 60 N. E. 355.....	1028, 1029, 1033
Guice v. Barr, 130 Ala. 570, 30 South. 5636.....	1174
Guild v. Atchison R. R. Co., 57 Kan. 70, 57 Am. St. Rep. 312, 45 Pac. 82, 33 L. R. A. 77.....	1295
Guild v. McDaniels, 43 Kan. 548, 23 Pac. 607.....	1509
Guild v. Meyer, 56 N. J. Eq. 183, 38 Atl. 959.....	143
Guillotte v. Poincy, 41 La. Ann. 333, 6 South. 507, 5 L. R. A. 403.	592
Guilmartin v. Middle Georgia & A. R. Co., 101 Ga. 565, 29 S. E. 189.....	250
Gulf Bag Co. v. Suttner et al. (1903), 124 Fed. 467.....	1044
Gulf C. & S. F. Ry. Co. v. Miami S. S. Co., 86 Fed. 407, 30 C. C. A. 142.....	1052
Gulf C. & S. F. Ry. Co. v. Puckett (Tex. Civ. App.), 82 S. W. 662.....	833
Gulf C. & S. F. Ry. Co. v. State, 72 Tex. 404, 13 Am. St. Rep. 815, 10 S. W. 81, 1 L. R. A. 849.....	1054
Gulick v. Fisher, 92 Md. 353, 48 Atl. 375.....	932, 958
Gulick v. Huntley, 144 Mo. 241, 46 S. W. 154.....	1191
Gulley v. Macy, 84 N. C. 434.....	1354
Gullickson v. Madsen, 87 Wis. 19, 57 N. W. 965.....	1410, 1422
Gun v. McCarthy, L. R. Ir. 13 Ch. D.....	1140
Gunaer v. Draper (Colo.), 79 Pac. 1040.....	1333
Gunley v. Thompson, 56 Ga. 316.....	197
Gunn v. Blair, 9 Wis. 352.....	160
Gunnison Gas & Water Co. v. Whitaker, 91 Fed. 191.....	59
Gusdorf v. Ikelheimer, 75 Ala. 148.....	1398, 1399
Gusthal v. Board of Aldermen, 23 App. Div. 315, 48 N. Y. Supp. 652.....	620

Gustin v. Union School Dist., 94 Mich. 502, 34 Am. St. Rep. 362, 54 N. W. 156.....	1286
Guthrie v. Anderson, 47 Kan. 383, 28 Pac. 164.....	1354
Gutsch v. McIlhargey, 69 Mich. 377, 37 N. W. 303.....	343
Guy v. Doak, 47 Kan. 236, 27 Pac. 968.....	117, 261
Guy v. Ide, 6 Cal. 99, 65 Am. Dec. 490.....	169
Guy B. Waite Co. v. Otto (N. J. Eq.), 54 Atl. 425.....	1427
Guyton v. Terrell, 132 Ala. 66, 31 South. 83.....	1413
Gwyer v. Spaulding, 33 Neb. 573, 50 N. W. 681.....	1144
Gypsum Plaster & Stucco Co. v. Adsit, 105 Mich. 498, 63 N. W. 518.....	283

H

Haas v. Billings, 42 Minn. 63, 43 N. W. 797.....	469
Haas v. Chicago Bldg. Soc., 89 Ill. 498.....	167, 179, 259
Habershon v. Blurton, 1 De Gex & S. 121.....	1535
Hacker v. Barton, 84 Ill. 313.....	846
Hacke's Appeal, 101 Pa. St. 245.....	937, 940, 945, 946
Hackett v. Boiss, L. R. 20 Eq. 494.....	940, 953, 956, 957
Hackett v. Snow, 10 Irish Eq. 220.....	177
Hackney v. Vawter, 39 Kan. 615, 18 Pac. 699.....	561
Hadaway v. Hynson, 89 Md. 305, 43 Atl. 806.....	45
Hadden v. Spader, 20 Johns. 554, 562.....	1415, 1417, 1464
Hade v. McVay, 31 Ohio St. 231.....	369
Haden v. Farmers' & Mechanics' Fire Assn., 80 Va. 683.....	1269
Hadley v. Nash, 69 N. C. 162.....	1386
Haeseig v. Brown, 34 Mich. 503.....	1083, 1086
Haeussler v. Missouri Iron Co., 110 Mo. 188, 33 Am. St. Rep. 431, 19 S. W. 75, 16 L. R. A. 220.....	1193, 1194, 1207
Haffey v. Lynch, 143 N. Y. 241, 38 N. E. 298.....	1367
Hagaman v. Commissioners of Cloud County, 19 Kan. 394.....	696
Hagedon v. Bank of Wisconsin, 1 Pinn. 61, 39 Am. Dec. 275....	307
Hagemeyer v. Village of St. Michael, 70 Minn. 482, 73 N. W. 412.....	837
Hagen v. Beth, 118 Cal. 330, 50 Pac. 425.....	920
Hagenback v. Hagenback etc. Co., 59 Fed. 14.....	161
Hager v. Shindler, 29 Cal. 55.....	1224, 1226, 1232, 1234, 1441
Hagerty v. Huddleston, 60 Ohio St. 149, 53 N. E. 960.....	727
Haggard v. Sanglin, 31 Wash. 165, 71 Pac. 711.....	266, 271
Haggarty v. Pittman, 1 Paige, 298, 19 Am. Dec. 434.....	162, 199
Hagge v. Kansas etc. Co., 104 Fed. 391.....	864
Haggerson v. Phillips, 37 Wis. 364.....	568
Haggerty, Ex parte, 124 Fed. 441.....	1025
Haggerty v. Wagner, 148 Ind. 625, 48 N. E. 366, 39 L. R. A. 384.	1206
Hagner v. Heyberger, 7 Watts & S. 104, 42 Am. Dec. 220.....	590
Hague v. Wheeler, 157 Pa. St. 324, 37 Am. St. Rep. 736, 27 Atl. 714, 22 L. R. A. 141.....	902
Hahl v. Sugo, 27 Misc. Rep. 1, 57 N. Y. Supp. 920.....	852
Hahl v. Sugo, 46 App. Div. 632, 61 N. Y. Supp. 770.....	831
Hahn v. Concordia Soc., 42 Md. 460.....	537
Haight v. Burr, 19 Md. 130.....	146
Haight v. Jaggar, 2 Coll. 231.....	825, 838
Haight v. Littlefield, 71 Hun, 285, 24 N. Y. Supp. 1097.....	936, 955
Haines v. Carpenter, 1 Woods, 262, Fed. Cas. No. 5905, affirmed in 91 U. S. 254, 23 L. ed. 345.....	164
Haines v. Einwachter (N. J. Eq.), 55 Atl. 38.....	510

Haines v. Haines, 4 Md. Ch. 133.....	1184
Hair v. Burnell, 106 Fed. 280.....	1395
Hairalson v. Carson, 111 Ga. 57, 36 S. E. 319.....	1153
Halbert v. Grant, 4 T. B. Mon. 581.....	1435
Hale v. Bryant, 109 Ill. 34.....	1315
Hale v. Coffin 120 Fed. 470.....	36, 39
Hale v. Darter, 5 Humph. 79.....	1173
Hale v. Hale, 4 Humph. 183.....	1521
Hale v. Frost, 99 U. S. 389, 25 L. ed. 419.....	417
Hale v. Hardon, 95 Fed. 747, 37 C. C. A. 240.....	439, 449
Hale v. Jaques, 69 N. H. 411, 43 Atl. 121.....	1184
Hale v. McVay, 31 Ohio St. 231.....	371
Hale v. Thomas, 7 Ves. 589.....	817
Hale-Berry Co. v. Diamond State Iron Co., 94 Ga. 61, 22 S. E. 217.....	237
Haleys v. Williams, 1 Leigh, 140, 19 Am. Dec. 743.....	1449
Half v. Green, 10 Okla. 338, 62 Pac. 816.....	733
Hall v. Alabama Terminal & Imp. Co., 104 Ala. 577, 53 Am. St. Rep. 87, 16 South. 439.....	1446
Hall v. Barrows, 4 De Gex, J. & S. 150.....	990
Hall v. Byron, L. R. 4 Ch. D. 667.....	941, 948, 957
Hall v. Delaplaine, 5 Wis. 206, 68 Am. Dec. 57.....	1341
Hall v. Donovan, 111 Mich. 395, 69 N. W. 643.....	202
Hall v. Fayetteville, 115 N. C. 281, 20 S. E. 373.....	725
Hall v. Fisher, 9 Barb. 17.....	1226
Hall v. Gambrii, 92 Fed. 32, 63 U. S. App. 751, 43 C. C. A. 190.....	1426
Hall v. Griffin, 119 Ala. 214, 24 South. 27.....	1111
Hall v. Hall, 3 Maen. & G. 79.....	143
Hall v. Hall, 10 Humph. (Tenn.) 352.....	1478
Hall v. Hall, 98 Wis. 193, 73 N. W. 1000.....	1110
Hall v. Hardy, 3 P. Wms. 187, note.....	1271, 1273
Hall v. Harris, 145 Mo. 614, 47 S. W. 506.....	1358
Hall v. Hiles, 2 Bush, 532.....	1267
Hall v. Hoxsey, 84 Ill. 616.....	1510
Hall v. Hyer, 48 W. Va. 353, 37 S. E. 594.....	1402
Hall v. Jenkinson, 2 Ves. & B. 125.....	197
Hall v. Kellogg, 16 Mich. 135.....	1229
Hall v. Melvin, 62 Ark. 439, 54 Am. St. Rep. 301, 35 S. W. 1109.....	1229
Hall v. Morris, 13 Bush, 322.....	1195
Hall v. Nash, 58 N. J. Eq. 554, 43 Atl. 683; affirming 39 Atl. 374.....	1435
Hall v. Nester, 122 Mich. 141, 80 N. W. 982.....	831, 849
Hall v. Otterson, 52 N. J. Eq. 522, 28 Atl. 907.....	34, 52, 61
Hall v. Piddock, 21 N. J. Eq. 316.....	1190, 1209, 1211
Hall v. Rood, 40 Mich. 46, 29 Am. Rep. 528.....	951
Hall v. Smith, 5 How. (U. S.) 96, 12 L. ed. 66.....	1477
Hall v. Solomon, 61 Conn. 476, 29 Am. St. Rep. 218, 23 Atl. 876.....	506
Hall v. Vernon, 47 W. Va. 295, 81 Am. St. Rep. 791, 34 S. E. 764.....	1188
Hall v. Whiston, 5 Allen (Mass.), 126.....	1228
Hallam v. Corlett, 71 Iowa, 446, 32 N. W. 449.....	1149
Hall v. Whittier, 10 R. I. 530.....	1332
Hall & Stillson Co., In re, 69 Fed. 425.....	312
Hall & Stilson Co., In re, 73 Fed. 527.....	293, 309, 311, 312, 318

Hallett v. Cumston, 110 Mass. 32.....	1518, 1520, 1522, 1530
Hallett v. Parker, 68 N. H. 598, 39 Atl. 433.....	1390
Halley v. Ingersoll, 14 S. D. 7, 84 N. W. 201.....	1132
Halley v. Winchester Diamond Lodge, 97 Ky. 438, 17 Ky. Law Rep. 293, 30 S. W. 999.....	1162
Hallifield v. Wrightsville & T. R. Co., 99 Ga. 365, 27 S. E. 715.....	339
Halls v. Newbold, 69 Md. 265, 14 Atl. 662.....	507
Halpern v. Clarendon H. L. Co., 64 Ark. 132, 40 S. W. 784.....	307
Halsell v. Renfrow (Okla.), 78 Pac. 118.....	1288, 1289
Halsey v. Cheney, 68 Fed. 763, 15 C. C. A. 656, 34 U. S. App. 50.....	50
Halsey v. Grant, 13 Ves. 73, 79.....	1363, 1366, 1370
Halstead v. Coen, 31 Ind. App. 302, 67 N. E. 757.....	816
Halstead v. Grinnan, 152 U. S. 412, 14 Sup. Ct. 641, 38 L. ed. 495.....	43, 49
Halsted v. Rabb, 8 Port. (Ala.) 63.....	1520, 1521, 1523
Ham v. Goodrich, 33 N. H. 32.....	1357
Ham v. Ham, 39 Me. 218.....	1214
Hamar v. Medsker, 60 Ind. 413.....	1147
Hamblin v. Dinneford, 2 Edw. Ch. (N. Y.) 529.....	1275
Hamblin v. Knight, 81 Tex. 351, 26 Am. St. Rep. 818, 16 S. W. 1082.....	1124
Hamblin Real Estate Co. v. City of Astoria, 26 Or. 599, 40 Pac. 230.....	645, 734
Hamburg-Bremen Fire Ins. Co. v. Atlantic Coast Line R. R. Co., 132 N. C. 75, 43 S. E. 548.....	1496
Hamburg-Bremen Fire Ins. Co. v. Pelzer Mfg. Co., 76 Fed. 479, 22 C. C. A. 283.....	1110
Hamilton, In re, 26 Or. 579, 38 Pac. 1088.....	368
Hamilton v. Brent Lumber Co., 127 Ala. 78, 28 South. 698.....	843
Hamilton v. Cummings, 1 Johns. Ch. 517.....	1090, 1239
Hamilton v. Detroit, 85 Minn. 83, 88 N. W. 419.....	622
Hamilton v. Dooly, 15 Utah, 280, 49 Pac. 769.....	41
Hamilton v. Fond du Lac, 25 Wis. 490.....	753, 1228
Hamilton v. Hamilton, 162 Ind. 430, 70 N. E. 535.....	1296
Hamilton v. Johnston, 82 Ill. 39.....	1477
Hamilton v. Marks, 5 De Gex & S. 638.....	70, 92, 96
Hamilton v. Menominee Falls Quarry Co., 106 Wis. 352, 81 N. W. 876.....	1440
Hamilton v. Smith, 57 Iowa, 15, 42 Am. Rep. 39, 10 N. W. 276.....	1171
Hamilton v. Whitridge, 11 Md. 128, 69 Am. Dec. 184.....	872, 896
Hamilton v. Wood, 55 Minn. 482, 57 N. W. 208.....	1094
Hamilton v. Worsefold, 10 Ves. 290, note (3).....	820
Hamilton-Brown Shoe Co. v. Saxey, 131 Mo. 212, 52 Am. St. Rep. 622, 32 S. W. 1106.....	792, 793, 1025, 1042
Hamlen v. Werner, 144 Mass. 397, 11 N. E. 684.....	503
Hamm v. J. Stone & Sons Livestock Co., 13 Tex. Civ. App. 414, 35 S. W. 427.....	406
Hammerly v. Mercantile Trust etc. Co., 123 Ala. 596, 26 South. 646.....	413
Hammond v. Foreman, 48 S. C. 175, 26 S. E. 212.....	1261
Hammond v. Fuller, 1 Paige, 197.....	913
Hammond v. Hopkins, 143 U. S. 224, 250, 12 Sup. Ct. 418, 36 L. ed. 134.....	40, 56
Hammond v. Hudson R. I. & M. Co., 20 Barb. 378.....	1447
Hammond v. Martin, 15 Tex. Civ. App. 570, 40 S. W. 347.....	1132
Hammond v. Pennoek, 61 N. Y. 145.....	1163

Hammond v. Tarver, 11 Tex. Civ. App. 48, 31 S. W. 841.....	309
Hammond v. Winchester, 82 Ala. 470, 2 South. 892.....	825
Hamor v. Engineering Co., 84 Fed. 393.....	372
Hanchett v. Blair, 100 Fed. 817, 41 C. C. A. 76.....	40
Hanchey v. Southern Home B. & L. Assn., 140 Ala. 245, 37 South. 272.....	1162
Hancock, In re, 27 Hun, 575.....	118
Hancock v. American Bonding & Trust Co., 86 Ill. App. 630....	264
Hancock v. Twyman, 19 Ky. Law Rep. 2006, 45 S. W. 68.....	1419
Hand v. Savannah & C. R. Co., 10 S. C. 406.....	398
Handlanger Union v. German Sav. Bank, 23 Abb. N. C. 42, 7 N. Y. Supp. 3, affirmed 57 N. Y. Super. Ct. (25 J. & S.) 594, 8 N. Y. Supp. 545.....	100
Handley v. Jackson, 31 Or. 552, 65 Am. St. Rep. 839, 50 Pac. 915.....	1117, 1120
Handley v. Stutz, 137 U. S. 706, 11 Sup. Ct. 117, 34 L. ed. 706..	1469
Handley v. Stutz, 139 U. S. 417, 11 Sup. Ct. 530, 35 L. ed. 227..	1427, 1458, 1467
Handman and Wilcox's Contract, In re, [1902] 1 Ch. D. 599...	1324
Handy v. Leavitt, 3 Edw. Ch. 229.....	1209, 1211
Handy v. Rice, 98 Me. 504, 57 Atl. 847.....	1384
Haney v. Legg, 129 Ala. 619, 87 Am. St. Rep. 81, 30 South. 34.....	40, 55, 57
Hanley v. Hanley, 114 Cal. 690, 46 Pac. 736.....	1105
Hanley v. Kansas City Southern R. Co., 187 U. S. 617, 23 Sup. Ct. 314, 47 L. ed. 333.....	584
Hanley v. Randolph Co. Court, 50 W. Va. 439, 40 S. E. 389....	625
Hanley v. Waterson, 39 W. Va. 214, 19 S. E. 536.....	834
Hanna v. Hanna, 89 N. C. 68.....	107
Hanna v. McLaughlin, 158 Ind. 292, 63 N. E. 475.....	1528
Hannewinkle v. Georgetown, 15 Wall. 547, 21 L. ed. 231..	655, 660
Hannibal v. Nortoni, 154 Mo. 142, 55 S. W. 220.....	1235
Hannibal & St. J. R. R. Co. v. Nortoni, 154 Mo. 142, 55 S. W. 220.....	1240
Hannon v. Hounihan, 85 Va. 429, 12 S. E. 157.....	1361
Hannon v. Maxwell, 31 N. J. Eq. 318.....	1078
Hannum v. Media etc. Co., 200 Pa. St. 44, 49 Atl. 789.....	931
Hano v. Bigelow, 155 Mass. 341, 29 N. E. 628.....	503
Hanover Fire Ins. Co. v. Brown, 7 Md. 64, 39 Am. St. Rep. 386, 25 Atl. 989.....	1501
Hanover Fire Ins. Co. v. Germania Fire Ins. Co., 33 Hun, 539.	277
Hansen v. Allen, 117 Wis. 61, 93 N. W. 805.....	1165
Hanson v. Gardiner, 7 Ves. 305.....	820
Hanson v. Hunter etc. Co., 86 Iowa, 722, 48 N. W. 1005, 53 N. W. 84.....	610
Hanson v. Jaccard Jewelry Co., 32 Fed. 202.....	987
Hanson v. Willard, 12 Me. 142, 28 Am. Dec. 162.....	1180, 1190
Hansworth v. Sullivan, 6 Mont. 203, 9 Pac. 798.....	1121
Hapgood v. Rosenstock, 23 Fed. 86.....	1263, 1265, 1267
Harbach v. Des Moines & K. C. R. Co., 80 Iowa, 593, 44 N. W. 348, 11 L. R. A. 113.....	778
Harbison v. White, 46 Conn. 106.....	901
Harbor v. Evans, 101 Mo. 661, 20 Am. St. Rep. 646, 14 S. W. 750, 10 L. R. A. 41.....	943
Hardee v. Sunset Oil Co., 56 Fed. 51.....	215
Hardesty v. Taft, 23 Md. 513, 87 Am. Dec. 584....	579, 588, 596

Hardin v. Hardin, 34 S. C. 77, 27 Am. St. Rep. 786, 12 S. E. 936.....	165, 170, 180, 182
Hardin v. Jones, 86 Ill. 313.....	1245
Hardin v. Sweeney, 14 Wash. 129, 44 Pac. 138.....	354, 364
Harding v. American Glucose Co., 182 Ill. 551, 74 Am. St. Rep. 189, 55 N. E. 577.....	546, 549
Harding v. Craft, 21 App. Div. 139, 47 N. Y. Supp. 450.....	1195
Harding v. Eichinger, 57 Ohio St. 371, 49 N. E. 306.....	590
Harding v. Glover, 18 Ves. 281.....	144, 147
Harding v. Olson, 177 Ill. 298, 52 N. E. 482.....	1321
Harding v. Parshall, 56 Ill. 219.....	1368
Harding v. Stamford Water Co., 41 Conn. 87.....	910
Hardinsburg v. Cravens, 148 Ind. 1, 47 N. E. 153.....	765
Hardt v. Heidweyer, 152 U. S. 547, 558, 14 Sup. Ct. 671, 38 L. ed. 548.....	54
Hardy v. Gregg (Miss.), 2 South. 358.....	1192
Hardy v. McClellan, 53 Miss. 507.....	118, 262, 268
Hardy v. Mills, 35 Wis. 141.....	1200
Hardy v. Summers, 10 Gill & J. (Md.) 316, 32 Am. Dec. 167.....	1193
Hareison v. Kansas City etc. Co., 151 Mo. 483, 52 S. W. 368..	881
Hargrave v. Hall, 3 Ariz. 252, 73 Pac. 400.....	532
Hargreaves v. Tennis, 63 Neb. 356, 88 N. W. 486.....	1430
Harrington v. Sendall, [1903] 1 Ch. 921.....	554
Harkinson, Appeal of, 78 Pa. (28 P. F. Smith) 196, 21 Am. Rep. 9.....	525
Harkness v. Cleaves, 113 Iowa, 140, 84 N. W. 1033.....	1165
Harkrader v. Wadley, 172 U. S. 148, 19 Sup. Ct. 119, 43 L. ed. 399.....	1079, 1084
Harlan v. Langham, 69 Pa. St. 237.....	1203
Harlan & H. Co. v. Paschall, 5 Del. Ch. 435.....	927, 973
Harland v. Bankers' & M. Tel. Co., 32 Fed. 305.....	356, 1233
Harley v. Montana Ore Purchasing Co., 27 Mont. 388, 71 Pac. 407.....	824
Harlow v. Oregonian Pub. Co. (Or.), 78 Pac. 737.....	497, 1294
Harman v. Harman, 70 Fed. 894, 935, 17 C. C. A. 479.....	1349
Harman v. Kelley, 14 Ohio, 502, 45 Am. Dec. 552.....	1184, 1197
Harman v. McMullin, 85 Va. 187, 7 S. E. 349.....	107
Harmon v. Jones, Craig & P. 299, 301.....	881, 882
Harmon v. Omaha, 53 Neb. 164, 73 N. W. 671.....	718
Harmon v. Page, 62 Cal. 448.....	1464, 1472
Harms v. Jacobs, 158 Ill. 505, 41 N. E. 1071.....	834
Harney v. Burhans, 91 Wis. 348, 64 N. W. 1031.....	1354
Harney v. Indianapolis etc. Railroad Co., 32 Ind. 244.....	600, 609, 615
Harnish v. Bramer, 71 Cal. 155, 11 Pac. 888.....	1120
Harper v. Clayton, 84 Md. 346, 57 Am. St. Rep. 407, 35 Atl. 1083, 35 L. R. A. 211, 44 Cent. L. J. 97.....	1416
Harper etc. Co. v. Mountain etc. Co., 65 N. J. Eq. 479, 56 Atl. 297.....	873, 909, 969
Harrelson v. Kansas City etc. Co., 151 Mo. 482, 52 S. W. 368..	883
Harrigan v. Gilchrist, 121 Wis. 127, 99 N. W. 909.....	587, 321
Harrigan v. Mowry, 84 Cal. 456, 22 Pac. 658, 24 Pac. 48.....	1248
Harriman v. Northern Securities Co., 132 Fed. 464.....	1044
Harrington v. Churchward, 9 Jur., N. S., 576.....	1521
Harrington v. Connor, 51 Neb. 214, 70 N. W. 911.....	374
Harrington v. McCarthy, 169 Mass. 492, 48 N. E. 278....	852, 855
Harrington v. Plainview, 27 Minn. 224, 6 N. W. 777.....	622
Harrington v. Utterback, 57 Mo. 519.....	1226

Harrington v. Wheeler, 4 Ves. Jr. 686.....	1337
Harris, In re, 7 Del. Ch. 42, 28 Atl. 329.....	492
Harris v. Beauchamp, [1894] 1 Q. B. 801.....	120
Harris v. Boots, etc., Ltd., [1904] 2 Ch. 376.....	514
Harris v. Ferguson, 2 Bail. (S. C.) 397.....	1481
Harris v. Greenleaf, 25 Ky. Law Rep. 1940, 79 S. W. 267..	1338, 1340
Harris v. Knickerbaeker. 5 Wend. 638.....	1354
Harris v. McClung, 10 Okla. 701, 64 Pac. 4.....	851
Harris v. Mackintosh, 133 Mass. 228, 230.....	468
Harris v. Pullman, 84 Ill. 20, 25 Am. Rep. 416.....	1126
Harris v. Root, 28 Mont. 159, 72 Pac. 429.....	435
Harris v. Schryock, 82 Ill. 119.....	588
Harris v. Sleep, [1897] 2 Ch. 81.....	425
Harris v. Thomas, 1 Hen. & M. (Va.) 18.....	843, 848
Harris v. United States etc. Inv. Co., 146 Ind. 265, 45 N. E.	
328.....	171
Harris v. Warner, 13 Wend. (N. Y.) 400.....	1476
Harrisburg Club v. Athletic Assn., 8 Pa. Co. Ct. Rep. 337, 342..	1299
Harrison v. Bray, 92 N. C. 488.....	569
Harrison v. Farmers' Loan & Tr. Co., 94 Fed. 728, 36 C. C. A.	
443.....	1426
Harrison v. Gibson, 23 Gratt. (Va.) 212.....	1516
Harrison v. Hebbard, 101 Cal. 152.....	552
Harrison v. Lane, 5 Leigh (Va.), 414, 27 Am. Dec. 607.....	1476
Harrison v. Lokey, 26 Tex. Civ. App. 404, 63 S. W. 1030....	
.....	1118, 1121
Harrison v. Nettleship, 2 Mylne & K. 423.....	1073
Harrison v. New Orleans, 33 La. Ann. 222, 39 Am. Rep. 272..	601
Harrison v. Southwark etc. Co., [1891] 2 Ch. Div. 409.....	864
Harrison v. Taylor, 111 Ala. 317, 19 South. 986.....	1200
Harron v. Du Bois, 64 N. J. Eq. 657, 54 Atl. 857.....	1401
Harrup v. Winslet, 37 Ga. 655.....	164
Harshey v. Blackman, 20 Iowa, 161, 89 Am. Dec. 520.....	1117
Hart v. Albright, 18 N. Y. Supp. 718, 28 Abb. N. C. 74.....	1409
Hart v. Carroll, 85 Pa. St. 508.....	1353
Hart v. Conolly, 49 La. Ann. 1587, 22 South. 809.....	1132
Hart v. Crane, 7 Paige, 37.....	163
Hart v. Deitrich (Neb.), 96 N. W. 144.....	1531
Hart v. Hawkins, 3 Bibb (Ky.), 510, 6 Am. Dec. 666.....	1211
Hart v. Herwig, L. R. 8 Ch. App. 860.....	1265
Hart v. Hildebrandt, 30 Ind. App. 415, 66 N. E. 173.....	831, 877
Hart v. Leonard, 42 N. J. Eq. 416, 7 Atl. 865.....	946
Hart v. Logan, 49 Mo. 47.....	1381
Hart v. Mayor etc. Albany, 9 Wend. 571, 24 Am. Dec. 165....	821
Hart v. O'Rourke, 151 Ind. 205, 51 N. E. 330.....	1075
Hart v. Respeas, 89 Ga. 87, 14 S. E. 910.....	167
Hart v. Sansom, 110 U. S. 151, 3 Sup. Ct. 586, 28 L. ed. 101....	16, 26
Hart v. Sims, 3 Edw. Ch. 266.....	189
Hart v. Smith, 44 Wis. 217.....	750
Hart v. Steedman, 98 Mo. 452, 11 S. W. 993.....	1203
Hart v. Tulk, 6 Hare, 611.....	161
Hart v. Western R. R. Co., 13 Met. (Mass.) 99, 46 Am. Dec. 719..	1496
Harter v. Songer, 138 Ind. 161, 37 N. E. 595.....	1497
Hartford v. Chipman, 21 Conn. 488.....	1227
Hartford Life Ann. Co. v. Cummings, 50 Neb. 236, 69 N. W. 782..	101
Hartley v. Atkins, 64 Ill. App. 502.....	1436

Hartman v. Evans, 38 W. Va. 669, 18 S. E. 810.....	566, 567
Hartman v. Hartman, 59 Ill. 104.....	1196, 1216
Hartman v. Heady, 57 Ind. 545.....	1087
Hartshorn v. Smart, 67 Kan. 543, 73 Pac. 73.....	1348
Hartshorn v. South Reading, 3 Allen, 501.....	932
Hartshorne v. Hartshorne, 2 N. J. Eq. 349.....	1167, 1168
Harvey v. Pennypacker, 4 Del. Ch. 445, 486.....	1531
Harvey v. Sellers, 115 Fed. 757.....	1522
Harwell v. Potts, 80 Ala. 70.....	118
Harwood v. Kirby, 1 Paige, 469.....	1182, 1202, 1205
Hasch v. Seattle, 10 Wash. 435, 38 Pac. 1131.....	747
Haskell v. Denver etc. Co., 23 Colo. 60, 46 Pac. 121.....	774, 952
Haskell v. Queen, 66 Hun, 634, 21 N. Y. Supp. 357.....	1197
Haskell v. Read (Neb.), 93 N. W. 997.....	551
Haskell v. Sutton, 53 W. Va. 206, 44 S. E. 533.....	848, 1224, 1227
Haskell v. Wright, 23 N. J. Eq. 389.....	506
Haskin Wood Vulcanizing Co. v. Cleveland Shipbuilding Co., 94 Va. 439, 26 S. E. 878.....	1445
Hass v. Billings, 42 Minn. 63, 43 N. W. 797.....	1104
Hass v. Levertton (Iowa), 102 N. W. 811.....	1077
Hassam v. Day, 39 Miss. 392, 77 Am. Dec. 684.....	1200
Hassan v. Rochester, 67 N. Y. 528.....	723, 724
Hastings Malting Co. v. Iron Range Brewing etc. Co., 65 Minn. 28, 67 N. W. 652.....	1466
Hasty v. Simpson, 77 N. C. 69.....	193
Hatch, In re, 155 N. Y. 401, 50 N. E. 49, 40 L. R. A. 664.....	371
Hatch v. Buffalo, 38 N. Y. 276.....	1237
Hatch v. Dana, 101 U. S. 205, 25 L. ed. 885.....	1465, 1469
Hatch v. Ferguson, 57 Fed. 972.....	1161
Hatch v. Johnson, 79 Fed. 828, 836.....	366
Hatch v. Lucky Bill Min. Co., 25 Utah, 405, 71 Pac. 865.....	1336
Hatch Storage Battery Co. v. Edison Storage Battery Co., 100 Fed. 975, 41 C. C. A. 133.....	982
Hatfield v. Cummings, 140 Ind. 547, 40 N. E. 53.....	239
Hatfield v. Cummings, 142 Ind. 350, 39 N. E. 859.....	353, 363
Hatfield v. Cummings, 152 Ind. 280, 50 N. E. 231.....	360
Hatfield v. De Long, 156 Ind. 207, 83 Am. St. Rep. 194, 59 N. E. 483, 51 L. R. A. 751.....	559
Hatfield v. De Long, 31 Ind. App. 210, 67 N. E. 551.....	559
Hatfield v. McWhorter, 40 Ga. 269.....	84, 86, 88, 90
Hatfield v. Merod, 82 Ill. 113.....	1480
Hathaway v. Foy, 40 Mo. 540.....	65, 83
Hathaway v. Payne, 34 N. Y. 92, 103.....	1374, 1375
Hatton v. Gray, 2 Cas. Ch. 164.....	1293
Haugan v. Netland, 51 Minn. 552, 53 N. W. 873.....	183, 262, 272
Haugh's Appeal, 102 Pa. St. 42, 48 Am. Rep. 193.....	873
Haughwout v. Murphy, 22 N. J. Eq. 536, 545.....	326, 1374
Haulenbeck v. Cronkright, 26 N. J. Eq. 159.....	1214
Haupt v. Independent etc. Co., 25 Mont. 122, 63 Pac. 1033.....	837
Havemeyer v. Superior Court, 84 Cal. 327, 18 Am. St. Rep. 192, 24 Pac. 121.....	205, 219, 233, 234, 235, 237, 245, 301
Havens v. Willis, 100 N. Y. 488, 3 N. E. 313.....	1494
Haye v. Kelleher, 36 App. Div. 201, 56 N. Y. Supp. 889.....	1187
Hawes v. Oakland, 104 U. S. 450, 26 L. ed. 827.....	546
Hawes v. Orr, 10 Bush, 431.....	1203
Hawes v. Swanzey, 123 Iowa, 51, 98 N. W. 586.....	1321, 1367

Hawk v. Greensweig, 2 Pa. St. 295.....	1333
Hawker v. Moore, 40 W. Va. 49, 20 S. E. 848.....	1442
Hawkes v. Eastern Ry. Co., 1 De Gex, M. & G. 737, 755.....	1320
Hawkins v. Donnerberg (1901), 40 Or. 108, 66 Pac. 691, 908....	1459
Hawkins v. Glenn, 131 U. S. 319, 9 Sup. Ct. 739, 33 L. ed. 184....	1465
Hawkins v. Ireland, 64 Minn. 339, 58 Am. St. Rep. 534, 67 N. W.	
73	32, 1125, 1126
Hawkins v. Willard (Tex. Civ. App.), 38 S. W. 365.....	487, 1133
Hawkins v. Wills, 4 U. S. App. 274, 49 Fed. 506, 1 C. C. A. 339....	1086
Hawks v. Hawks (Vt.), 54 Atl. 959.....	492
Hawley v. Beardsley, 47 Conn. 571.....	907
Hawley v. Clowes, 2 Johns. Ch. 122.....	803, 817, 1209
Hawley v. James, 5 Paige, 318.....	1381
Hawley v. James, 7 Paige, 213, 32 Am. Dec. 623.....	30
Haworth v. Taylor, 108 Ill. 275.....	1233
Hawralt v. Warren, 18 N. J. Eq. 124, 128, 90 Am. Dec. 613	
.....	1369, 1370
Haxsie v. Ellis, 4 R. I. 124.....	1206
Hay v. Estell, 19 N. J. Eq. 135.....	1214
Hay v. Knauth, 36 App. Div. 612, 55 N. Y. Supp. 680.....	947
Hay v. Marshall, 3 Humph. 623.....	1517
Hay v. McDaniel, 26 Ind. App. 683, 60 N. E. 729.....	118
Hay v. Weber, 79 Wis. 587, 24 Am. St. Rep. 737, 48 N. W. 859..	932
Hayden v. Cabot, 17 Mass. 169.....	1475
Hayden v. Official Hotel etc. Co., 42 Fed. 875.....	548
Hayden v. Thrasher, 18 Fla. 795.....	1476, 1491
Hayes, Appeal of, 123 Pa. St. 110, 16 Atl. 600.....	1201
Hayes v. Carroll, 74 Minn. 134, 76 N. W. 1017.....	59
Hayes v. Doncan, [1899] 2 Ch. 13	527
Hayes v. Douglas County, 92 Wis. 429, 53 Am. St. Rep. 926, 65	
N. W. 482, 31 L. R. A. 213.....	749, 758
Hayes v. Harmony Grove Cemetery, 108 Mass. 400, 402....	1321, 1322
Hayes v. Johnson, 4 Ala. 267.....	65
Hayes v. Nourse, 114 N. Y. 607, 11 Am. St. Rep. 700, 22 N. E.	
40	1324
Hayes v. O'Brien, 149 Ill. 403, 37 N. E. 73, 23 L. R. A. 555....	31
Hayes v. United States Phonograph Co., 65 N. J. Eq. 5, 55 Atl.	
84	1091, 1111
Hayes v. Ward, 4 Johns. Ch. 123.....	1494
Hayes v. Waverly & P. R. Co., 51 N. J. Eq. 348, 27 Atl. 649....	502
Hayes v. Willis, 11 Abb. Pr., N. S., 167.....	519
Hays v. Jones, 27 Ohio St. 218.....	610
Hays v. Lycoming Fire Ins. Co., 99 Pa. St. 621.....	288, 290
Hays v. Pierson (N. J. Eq.), 58 Atl. 728.....	373
Haythorn v. Margerem, 3 Halst. Ch. (7 N. J. Eq.) 324....	1226, 1233
Hayward v. Andrews, 106 U. S. 672, 1 Sup. Ct. 544, 27 L. ed.	
271	978
Hayward v. Eliot National Bank, 96 U. S. 611, 24 L. ed. 855....	61
Hayward v. Hayward, 34 Ch. D. 198.....	1058
Hayward v. Leeson, 176 Mass. 310, 57 N. E. 656, 49 L. R. A.	
725	441
Haywood v. Brunswick Bldg. Soc., L. R. A. 8 Q. B. D. 403.....	500
Haywood v. Hutchins, 65 N. C. 574.....	1517
Haywood v. Judson, 4 Barb. 228.....	1210
Haywood v. Lincoln Lumber Co., 64 Wis. 639, 26 N. W. 184. .213, 218	
Hazard v. Durant, 19 Fed. 471, 476.....	440

Hazelrig v. Hutson , 18 Ind. 481.....	1369
Hazeltine v. Granger , 44 Mich. 503, 7 N. W. 74.....	170, 176
Hazelton v. Douglas , 97 Wis. 214, 65 Am. St. Rep. 122, 72 N. W. 637	1493
Hazelton v. Putnam , 3 Chand. 117, 54 Am. Dec. 158, 3 Pinn. (Wis.) 107	942
Hazen v. Durling , 2 N. J. Eq. 133, 137, 138.....	1450
Hazen v. Lyndonville Nat. Bank , 70 Vt. 543, 67 Am. St. Rep. 680, 41 Atl. 1046.....	1127
Hazen v. Thurber , 4 Johns. Ch. 604.....	1168
Hazle v. Bondy , 173 Ill. 302, 50 N. E. 671.....	1498
Hazzard v. O'Bannon (Cir. Ct., E. D. Mo.), 36 Fed. 854.....	657
H. B. Claflin Co. v. Furtick , 119 Fed. 429.....	266, 271
Head v. Fordyce , 17 Cal. 149.....	1227, 1248
Head v. James , 13 Wis. 641.....	1228, 1236
Head v. Porter , 70 Fed. 498, Ames, Cas. in Eq. Jur., 644...977, 979	
Heald v. Rhind , 86 Md. 320, 38 Atl. 43.....	66
Heard v. Murray , 93 Ala. 127, 9 South. 514.....	201, 266, 272
Hearne v. Marine Ins. Co. , 20 Wall. 488, 22 L. ed. 395.....	1148
Hearne v. Smart , 13 Ves. 287.....	1337
Hearne v. Tenant , 13 Ves. 287.....	1338
Heath v. Missouri etc. Ry. Co. , 83 Mo. 617.....	384
Heath v. Shaffer , 93 Fed. 647.....	1079
Heath v. Wright , 3 Wall. Jr. 141, Fed. Cas. No. 6310.....	1000
Heatcote v. Haskins , 74 Iowa, 566, 38 N. W. 417.....	1103
Heaton v. Dearden , 16 Beav. 147.....	1202
Heaton v. Hull , 28 Misc. Rep. 97, 59 N. Y. Supp. 281.....	555
Hebert v. Mutual Life Ins. Co. , 12 Fed. 807.....	1270
Hebrew etc. Assn. v. Mayor etc. , 4 Hun, 446.....	1228
Hechmer v. Gilligan , 28 W. Va. 750, 757.....	67, 83
Heckard v. Sayre , 34 Ill. 142.....	1342
Hedderly v. Johnson , 42 Minn. 443, 18 Am. St. Rep. 521, 44 N. W. 527, 528.....	1321, 1323
Hedges v. Polhemus , 9 Misc. Rep. 680, 30 N. Y. Supp. 556.....	375
Hedrick v. McElroy (Iowa), 76 N. W. 716.....	382
Heeg v. Licht , 80 N. Y. 579, 36 Am. Rep. 654.....	870, 871
Heffran v. Hutchins , 160 Ill. 550, 52 Am. St. Rep. 353, 43 N. E. 709 (affirming 56 Ill. App. 581).....	594
Heffron v. Gage , 149 Ill. 182, 36 N. E. 569.....	384
Heffron v. Rice , 149 Ill. 216, 41 Am. St. Rep. 271, 36 N. E. 562..	426
Hefleblower v. Buck , 64 Md. 15, 20 Atl. 991.....	141, 142, 146
Hegewisch v. Silver , 140 N. Y. 414, 35 N. E. 658.....	354, 366
Hegler v. Grove , 63 Ohio St. 404, 59 N. E. 162.....	1420
Heidelbach v. Fenton , 79 Ill. App. 357.....	1400
Heidritter v. Elizabeth Oil Cloth Co. , 112 U. S. 294, 305, 5 Sup. Ct. 135, 28 L. ed. 729.....	324
Heilbron v. Fowler Switch Canal Co. , 75 Cal. 426, 7 Am. St. Rep. 183, 17 Pac. 535.....	876, 969
Heilman v. Lebanon etc. Co. , 175 Pa. St. 188, 34 Atl. 647, 180 Pa. St. 627, 37 Atl. 119.....	788, 922
Heilman v. Lebanon etc. Co. , 180 Pa. St. 627, 37 Atl. 119.....	952
Heilman v. Union Canal Co. , 37 Pa. St. 100.....	834, 1037
Heim v. Butin , 109 Cal. 500, 50 Am. St. Rep. 54, 42 Pac. 138...1096	
Heimburg v. Manhattan R. Co. , 162 N. Y. 352, 56 N. E. 899, 19 App. Div. 179, 45 N. Y. Supp. 999.....	782
Heinroth v. Kochersperger , 173 Ill. 205, 50 N. E. 171.....	685

Heinze v. Boston & M. C. C. & S. M. Co., 20 Mont. 528, 52 Pac. 273.....	843
Heinze v. Butte & Boston Consolidated Min. Co., 126 Fed. 1, 11, 61 C. C. A. 63.....	108, 151, 158
Heinze v. Kleinschmidt, 25 Mont. 89, 63 Pac. 927.....	151
Heir v. Kaufman, 134 Ill. 215, 25 N. E. 517.....	1120
Helden v. Hellen, 80 Md. 620, 31 Atl. 506.....	1228
Helfenstein v. Reed, 62 Fed. 214, 10 C. C. A. 327, 27 U. S. App. 103.....	44
Hellams v. Abercrombie, 15 S. C. 110, 40 Am. Rep. 684.....	1492
Hellams v. Prior, 64 S. C. 296, 42 S. E. 106.....	60
Hellebush v. Blake, 119 Ind. 349, 21 N. E. 976.....	118, 258
Helling v. Lumley, 3 De Gex & J. 493, 498, 499.....	1320
Hellman v. Shoulters, 114 Cal. 136, 44 Pac. 915, 45 Pac. 1057....	670
Helmken v. Meyer (Ga.), 45 S. E. 450.....	98
Helmore v. Smith, 35 Ch. D. 449.....	303, 323
Helms v. Austin, 116 N. C. 751, 21 S. E. 556.....	1208
Heman v. Wade, 74 Mo. App. 339.....	832, 843
Hemings v. Pugh, 4 Giff. 456.....	1520, 1521
Hemsley v. Marlborough Hotel Co., 62 N. J. Eq. 164, 50 Atl. 14.....	509, 510
Hemsley v. Marlborough Hotel Co., 65 N. J. Eq. 167, 55 Atl. 994.....	505
Hemsley v. Myers, 45 Fed. 283.....	1079, 1084
Henderson v. Bates, 3 Blackf. 460.....	1125
Henderson v. Dickey, 35 Mo. 120.....	1144
Henderson v. Farley Nat. Bank, 123 Ala. 547, 82 Am. St. Rep. 140, 26 South. 226.....	1411
Henderson v. Flanagan, 75 Ill. App. 283.....	1087
Henderson v. Hall, 134 Ala. 455, 32 South. 840.....	1464
Henderson v. Hays, 2 Watts, 148, 151.....	1320
Henderson v. Kirkland, 127 Ala. 185, 28 South. 674.....	1147
Henderson v. McDuffee, 5 N. H. 38, 20 Am. Dec. 557.....	1481
Henderson v. Moore, 125 N. C. 383, 34 S. E. 446.....	1075
Henderson v. New York Central R. Co., 78 N. Y. 423.....	771, 777, 830, 836, 860, 912
Henderson v. Thornton, 37 Miss. 448, 75 Am. Dec. 70.....	1410
Henderson-Achert Lithographie Co. v. John Shillito Co., 64 Ohio St. 236, 83 Am. St. Rep. 745, 60 N. E. 295..	1502, 1512, 1513
Hendricks v. Gilchrist, 76 Ind. 369.....	686
Hendricks v. Hughes, 117 Ala. 591, 23 South. 637.....	516
Hendricks v. Robinson, 2 Johns. Ch. 283, 296.....	1412
Hendrickson v. Bradley, 85 Fed. 508, 29 C. C. A. 303.....	1125
Hendrickson v. Hinckley, 17 How. 443, 445, 15 L. ed. 123..	1075, 1124
Hendrix v. American Land & Mortgage Co., 95 Ala. 313, 11 South. 213.....	266, 271
Hendron v. Kinner, 110 Iowa, 544, 81 N. W. 783.....	1092
Hendy v. March, 75 Cal. 566, 17 Pac. 702.....	1533
Henkel v. Millard, 97 Md. 24, 54 Atl. 657.....	585
Henkleman v. Peterson, 154 Ill. 419, 40 N. E. 359.....	1139
Hennman v. Westheimer (Mo. App.), 85 S. W. 101.....	1115
Henn v. Walsh, 2 Edw. Ch. (N. Y.) 129.....	117
Hennessy v. Carmony, 50 N. J. Eq. 616, 25 Atl. 374.....	857, 867, 870, 874, 893, 906
Hennessy v. Douglas County, 99 Wis. 129, 74 N. W. 983....	755, 756
Hennessy v. Sweeney, 57 N. Y. Supp. 901.....	184
Henning v. Miller, 83 Hun, 403, 31 N. Y. Supp. 878.....	1356

Henning v. Raymond , 35 Minn. 303, 29 N. W. 132.....	360
Henry v. Ann Arbor Ry. Co. , 116 Mich. 314, 75 N. W. 886.....	544
Henry v. Furbish , 30 Misc. Rep. 822, 62 N. Y. Supp. 247..	
.....	260, 267, 273
Henry v. Gregory , 29 Mich. 68.....	705, 1228
Henry v. Henry , 103 Ala. 582, 15 South. 916.....	387, 396
Henry v. Henry , 27 Ohio St. 121.....	1361, 1362
Henry v. Koch , 80 Ky. 391, 44 Am. Rep. 484.....	956
Henry v. Louisville , 19 Ky. Law Rep. 790, 42 S. W. 94.....	940
Henry v. McKerlie , 78 Mo. 416.....	1259
Henry v. Seager , 80 Ill. App. 172.....	1110
Henry Gaus & Sons Mfg. Co. v. St. Louis, K. & N. W. Ry. Co. ,	
113 Mo. 308, 20 S. W. 658, 18 L. R. A. 339.....	769
Hensel v. Kegans (Tex. Civ. App.), 28 S. W. 705.....	59
Henshaw v. Wells , 9 Humph. 568.....	163
Henson v. Brooks , 67 Ala. 491.....	569
Henwood v. Jarvis , 27 N. J. Eq. 247.....	1090
Hepburn v. Dunlop , 1 Wheat. 179, 196, 4 L. ed. 65.....	1296, 1320
Hepburn v. Gordon , 2 Hen. & M. 345.....	920
Herbert v. Herbert , 49 N. J. Eq. 565, 25 Atl. 366.....	1099
Herbert v. Mechanics' B. & L. Assn. , 17 N. J. Eq. 497, 90 Am.	
Dec. 601.....	1401
Herbert v. Pennsylvania R. R. Co. , 43 N. J. Eq. 21, 10 Atl.	
872.....	919, 1063
Herbert v. Wren , 7 Cranch, 370, 3 L. ed. 374.....	1168, 1169
Herbst , In re, 63 Hun, 247, 17 N. Y. Supp. 760.....	345
Hercy v. Birch , 9 Ves. 357.....	1272
Herman v. Roberts , 119 N. Y. 37, 16 Am. St. Rep. 800, 23 N. E.	
442, 7 L. R. A. 226.....	940, 957
Hermann v. Babcock , 103 Ind. 461, 3 N. E. 142.....	1259
Hermann v. Hodges , L. R. 16 Eq. 18.....	1258, 1270
Herold v. Barlow , 47 W. Va. 750, 36 S. E. 8.....	1440
Herr v. Central etc. Asylum , 22 Ky. Law Rep. 1722, 61 S. W.	
283.....	907
Herr v. Herr , 5 Pa. St. 428, 47 Am. Dec. 416.....	1203
Herr v. Kentucky etc. Asylum , 22 Ky. Law Rep. 1722.....	922
Herreshoff v. Boutineau , 17 R. I. 3, 33 Am. St. Rep. 850, 19	
Atl. 712, 8 L. R. A. 469.....	528
Herring v. Fitts , 43 Fla. 54, 99 Am. St. Rep. 108, 30 South.	
804.....	1147
Herrington v. Williams , 31 Tex. 448.....	1233
Herriman v. Skillman , 33 Barb. 378.....	1404
Herrlich v. Kaufmann , 99 Cal. 271, 37 Am. St. Rep. 50, 33 Pac.	
857.....	1409, 1432
Herron v. Vance , 17 Ind. 595.....	353
Hersey v. Board of Supervisors , 16 Wis. 186, 82 Am. Dec.	
713.....	750, 754
Hersey v. Board of Supervisors , 37 Wis. 75.....	750
Hertford v. Boore , 5 Ves. Jr. 719.....	1335, 1336, 1337
Hertzler v. Stephens , 119 Ala. 333, 24 South. 521.....	1143
Hervy v. Gibson , 10 Bosw. (N. Y.) 591.....	193, 196
Hervey v. Smith , 1 Kay & J. 389.....	960
Herzog v. New York El. R. Co. , 76 Hun, 486, 27 N. Y. Supp.	
1034, affirmed without opinion, 151 N. Y. 665, 46 N. E. 1148.	782
Hess v. Horton , 2 App. D. C. 81.....	1429
Hessler v. Schafer , 20 Misc. Rep. 645, 46 N. Y. Supp. 1076....	516

Hester v. Hunnicut, 104 Ala. 282, 16 South. 162.....	1382, 1394
Hetfield v. Willey, 105 Ill. 286.....	1307
Heublein v. Adams, 125 Fed. 782.....	992
Heusner v. Mutual Life Ins. Co., 47 Mo. App. 336.....	92
Hovenier v. Berry, 17 W. Va. 474.....	1494
Hewett v. Fenstamaker, 128 Ind. 315, 27 N. E. 621.....	689
Heywood v. Buffalo, 14 N. Y. 534.....	1228, 1235
Hexo v. Gill, L. R. 7 Ch. App. 699.....	823
Heyman v. Smadbeck, 27 N. Y. Supp. 141, 6 Misc. Rep. 527....	72
Heywood v. City of Buffalo, 14 N. Y. 534.....	721, 722
Heywood v. Tillson (1882), 75 Me. 225, 234, 46 Am. Rep. 373...	1018
Hlawacek v. Bohman, 51 Wis. 92, 8 N. W. 102.....	156
Hibbard v. Eastman, 47 N. H. 507, 93 Am. Dec. 467.....	1086
Hibernia National Bank v. Lacombe, 84 N. Y. 367, 38 Am. Rep. 518.....	444, 446, 447
Hiehorn v. Fletcher, 66 Me. 209, 22 Am. Rep. 562.....	1487
Hiehman v. Gilligan, 28 W. Va. 757.....	70
Hickey v. Parrot Silver etc. Min. Co., 25 Mont. 164, 64 Pac. 330	158
Hickey v. Parrot Silver & Copper Co. (Mont.), 79 Pac. 698..	396, 427
Hickling v. Wilson, 104 Ill. 54	1473
Hickman v. Searcy, 17 Tenn. (9 Yerg.) 47.....	1483
Hickman v. Stout, 2 Leigh, 6.....	1517
Hickok v. Caton, 53 W. Va. 46, 44 S. E. 178.....	1123
Hickox v. Holladay, 29 Fed. 226, 233.....	309
Hicks v. American Natural Gas Co., 207 Pa. St. 570, 57 Atl. 55..	483
Hicks v. Brinson, 28 S. E. 380, 100 Ga. 595.....	1118
Hicks v. Compton, 18 Cal. 206.....	840
Hicks v. Consolidation Coal Co., 77 Md. 86, 25 Atl. 979.....	415
Hicks v. Michael, 15 Cal. 107.....	843
Hicks v. Turek, 72 Mich. 311, 40 N. W. 339.....	1259, 1270
Higbie v. Westlake, 14 N. Y. 281.....	1170
Higginbotham v. Cooper, 116 Ga. 741, 42 S. E. 1000.....	1289
Higginbottom v. Short, 25 Miss. 160, 57 Am. Dec. 198.....	1216
Higgins, In re, 27 Fed. 443.....	303, 322
Higgins v. Bullock, 73 Ill. 205.....	1076
Higgins v. Butler, 78 Me. 520, 7 Atl. 276.....	1312, 1313
Higgins v. Flemington Water Co., 36 N. J. Eq. 538, 544..	868, 906, 969
Higgins v. Woodward, Hopk. 342.....	840
Higgins Co. v. Higgins Soap Co., 144 N. Y. 462, 43 Am. St. Rep. 679, 39 N. E. 490, 27 L. R. A. 42.....	998
Higgins Oil & Fuel Co. v. Snow, 113 Fed. 433, 51 C. C. A. 267..	39, 50
Higginson v. Chicago, B. & L. R. Co., 102 Fed. 197, 42 C. C. A. 254	585
Higginson v. Clowes, 15 Ves. 516, 524.....	1302
Highlands v. Johnson, 24 Colo. 371, 51 Pac. 1004.....	670
Highley v. Am. Exch. Nat. Bank, 185 Ill. 565, 57 N. E. 436...	1421
Highley v. Deane, 168 Ill. 266, 48 N. E. 50.....	428
Highway Commissioners v. Deboe, 43 Ill. App. 25.....	613
Hildebrand v. Tarbell, 97 Wis. 446, 73 N. W. 53.....	1440
Hildyard v. South Sea Co., 2 P. Wms. 77.....	1397
Hiles v. Moore, 15 Beav. 175	182
Hill, Estate of, 67 Cal. 238, 7 Pac. 664.....	1478
Hill, Ex parte, 2 Bos. & P. (N. R.) 191, note (a).....	1537
Hill v. Billingsly, 53 Miss. 111.....	1087
Hill v. Bowie, 1 Bland (Md.), 593.....	840

Hill v. Crocker, 87 Me. 208, 47 Am. St. Rep. 321, 32 Atl. 878....	1486
Hill v. Davies, 21 Ch. D. 798.....	1058
Hill v. Den, 54 Cal. 6.....	1202
Hill v. Fulbrook, Jacob, 574.....	1213
Hill v. Gould, 129 Mo. 106, 30 S. W. 181.....	226
Hill v. Gregory, 56 Miss. 341.....	1169
Hill v. Hill, 62 N. J. L. 442, 41 Atl. 943.....	1110
Hill v. Hoffman (Tenn. Ch. App.), 58 S. W. 929.....	871, 930
Hill v. Jones, 65 Ala. 214.....	1191, 1195
Hill v. McBurney, 112 Ga. 788, 38 S. E. 42, 52 L. R. A. 398....	870
Hill v. McCarter, 27 N. J. Eq. 41.....	1486
Hill v. Manser, 11 Gratt. (Va.) 522.....	1502
Hill v. Mayor etc. N. Y., 139 N. Y. 495, 34 N. E. 1090, reversing 63 Hun, 633, 18 N. Y. Supp. 399.....	897
Hill v. Nash, 73 Miss. 849, 19 South. 709.....	38
Hill v. Probst, 120 Ind. 528, 22 N. E. 664.....	688
Hill v. Proctor, 10 W. Va. 59.....	1173, 1174, 1177
Hill v. Reno, 112 Ill. 154, 54 Am. Rep. 222.....	1182, 1203
Hill v. Robertson, 24 Miss. 368.....	167
Hill v. Schneider, 4 N. Y. Ann. Cas. 70, 13 App. Div. 299, 43 N. Y. Supp. 1.....	871, 923
Hill v. Taylor, 22 Cal. 191.....	178
Hill v. Western & A. R. Co., 86 Ga. 284, 12 S. E. 635.....	375
Hill v. Young, 7 Wash. 33, 34 Pac. 144.....	1201
Hillens v. Brinsfield, 108 Ala. 605, 18 South. 604.....	1198, 1200
Hilles v. Parrish, 14 N. J. Eq. 380.....	548
Hilliard v. Allegheny Geometrical Wood Carving Co., 173 Pa. St. 1, 34 Atl. 231.....	34
Hilliard v. Asheville, 118 N. C. 845, 24 S. E. 738.....	725
Hilliard v. Seoville, 52 Ill. 449.....	1187
Hillman v. Newington, 57 Cal. 56.....	925
Hills v. Croll, 2 Phill. Ch. 60.....	498, 1300
Hills v. Metzenroth, 173 Mass. 423, 53 N. E. 890.....	504
Hills v. Miller, 3 Paige, 254, 24 Am. Dec. 218.....	507
Hills v. Parker, 111 Mass. 508, 15 Am. Rep. 63.....	344
Hilton v. Barrow, 1 Ves. 284.....	1152
Hilton v. Earl of Granville, 1 Craig & P. 283.....	917, 919
Hilton v. Guyot, 159 U. S. 113, 16 Sup. Ct. 139, 40 L. ed. 95....	440
Hillyer v. Le Roy (N. Y.), 72 N. E. 237.....	1447, 1452
Himmelreich v. Shaffer, 182 Pa. St. 201, 61 Am. St. Rep. 698, 37 Atl. 1007.....	1536
Hinchman v. Kelley, 54 Fed. 63, 4 C. C. A. 189, 7 U. S. App. 481.....	44
Hinchman v. Morris, 29 W. Va. 673, 2 S. E. 863.....	1512
Hinchman v. Paterson Horse R. Co., 17 N. J. Eq. (2 C. E. Greene) 75, 86 Am. Dec. 252.....	770, 853, 854, 883, 909
Hinckley v. Greany, 118 Mass. 595.....	1232
Hinckley v. Kreitz, 58 N. Y. 583.....	1477
Hinckley v. Miles, 15 Hun, 170.....	1095
Hinckley v. Pfister, 83 Wis. 64, 53 N. W. 21.....	65
Hinckley v. Smith, 51 N. Y. 21.....	1366
Hinds v. Terry, Walk. (Miss.) 80.....	1185
Hines v. Duncan, 79 Ala. 112, 58 Am. Rep. 580.....	1423
Hinkle v. Baldwin, 93 Mich. 422, 53 N. W. 534.....	1134
Hinkle v. Hinkle, 55 Ark. 583, 18 S. W. 1049.....	1357

Hinnershitz v. United Traction Co., 199 Pa. St. 3, 48 Atl. 874	773, 788
Hinrichsen v. Van Winkle, 27 Ill. 334.....	1075
Hinsdale v. Sinclair, 83 N. C. 338.....	193
Hinton v. Insurance Co., 63 Ala. 488.....	1148
Hirsch v. Israel, 106 Iowa, 498, 76 N. W. 811.....	188, 189, 1422
Hirshfeld v. Kalisher, 81 Hun, 606, 30 N. Y. Supp. 1027.....	335
Hirshfield v. Bopp, 27 App. Div. 180, 50 N. Y. Supp. 676.....	1446
Hirst v. Denham, L. R. 14 Eq. 542.....	990
Hitchcock v. Cosper (Ind.), 73 N. E. 264.....	56
Hitchcock v. Culver, 107 Ga. 184, 33 S. E. 35.....	1128
Hitchcock v. Giddings, 4 Price, 135.....	1151
Hitchcock v. Skinner, Hoff. Ch. 21.....	1198, 1201, 1212, 1213
Hitchcock Mfg. Co., In re, 1 App. Div. 164, 37 N. Y. Supp. 834..	245
Hitchen v. Birks, L. R. 10 Eq. 471.....	140
Hitchins v. Pettingill, 58 N. H. 3.....	1145
Hitchman v. Stewart, 3 Drew. 271.....	1482
Hite v. Thompson, 18 Mo. 461.....	1204
Hixon v. Oneida County, 82 Wis. 515, 52 N. W. 445. 749, 750, 751, 756	
Hoare v. Bremridge, L. R. 8 Ch. 22, 14 Eq. 522.....	1089, 1152
Hobart v. Ballard, 31 Iowa, 521.....	143
Hobart v. Bennett, 77 Me. 401.....	360
Hobbs v. Amador Co., 66 Cal. 161, 4 Pac. 1147.....	906
Hobbs v. Board of Commissioners, 103 Ind. 575, 3 N. E. 263....	688
Hobson, In re, 81 Iowa, 392, 46 N. W. 1095, 11 L. R. A. 255....	1402
Hobson v. Sherwood, 4 Beav. 184.....	1187, 1203, 1209
Hochstein v. Berghauser, 123 Cal. 681, 56 Pac. 547.....	1138, 1148
Hockaday v. Jones, 8 Okla. 156, 56 Pac. 1054.....	1115, 1119
Hodge v. Giese, 43 N. J. Eq. (16 Stew.) 342, 11 Atl. 484.....	959
Hodge v. Gray, 110 Mich. 654, 68 N. W. 979.....	1445
Hodge v. McMahon, 137 Ala. 171, 34 South. 185.....	565
Hodge v. Palms, 68 Fed. 61, 15 C. C. A. 220, 37 U. S. App. 61..	52
Hodge v. Palms, 117 Fed. 396.....	60
Hodge v. Sloan, 107 N. Y. 244, 1 Am. St. Rep. 816, 17 N. E. 335	506
Hodgen v. Guttery, 58 Ill. 431	1227
Hodges v. Kowing, 58 Conn. 12, 18 Atl. 979, 7 L. R. A. 87..	1261, 1262
Hodges v. Pingree, 10 Gray, 14.....	1192, 1520, 1522
Hodges v. Seaboard & R. R. Co., 88 Va. 653, 14 S. E. 380....	764, 771
Hodgman v. Chicago & St. P. R. Co., 20 Minn. 48, 20 Gil. 36	610, 622, 623
Hodgson v. Baldwin, 65 Ill. 532.....	1483
Hodgson v. Earl of Powis, 1 De Gex, M. & G. 6.....	542
Hodson v. Shaw, 3 Mylne & K. 183.....	1494
Hoe v. Boston Daily Advertiser Corp., 14 Fed. 914.....	980, 984
Hoe v. Knap, 27 Fed. 204.....	976
Hoey v. Gilroy, 129 N. Y. 132, 29 N. E. 85.....	926, 928
Hoffield v. Buffalo, 130 N. Y. 387, 29 N. E. 747.....	723
Hoffman v. Bank of Minot, 4 N. D. 473, 61 N. W. 1031.....	435
Hoffman v. Beard, 22 Mich. 66.....	1197, 1200
Hoffman v. Board of Commissioners, 18 Mont. 224, 44 Pac. 973..	625
Hoffman v. Fleming, 43 W. Va. 762, 28 S. E. 790.....	1411
Hoffman v. Schoyer, 143 Ill. 598, 28 N. E. 823.....	292
Hoffman v. Stigers, 28 Iowa, 302.....	17
Hoffmann v. Burris, 210 Ill. 587, 71 N. E. 584.....	1125
Hogan v. Kyle, 7 Wash. 595, 38 Am. St. Rep. 910, 35 Pac. 399..	1334

Hoge v. Hollister, 8 Baxt. (Tenn.) 533.....	181
Hoge v. Fidelity Loan & Tr. Co. (Va.), 48 S. E. 494.....	1076
Hogg v. Beerman, 41 Ohio St. 81, 52 Am. Rep. 71.....	1200, 1201
Hogg v. Kirby, 8 Ves. 215, 223	975
Hoggart v. Cutts, Craig & P. 197.....	80
Hohorst v. Howard, 37 Fed. 97.....	979
Hoke v. Perdue, 62 Cal. 545.....	889
Holbrook v. Bowman, 62 N. H. 313.....	1203
Holbrook v. Ford, 153 Ill. 633, 46 Am. St. Rep. 917, 39 N. E. 1091, 27 L. R. A. 324.....	308, 443, 450, 451, 452, 1452
Holden v. City of Alton, 179 Ill. 318, 53 N. E. 556....	609, 626, 627
Holden v. McMakin, Par. Eq. Cas. (Pa.) 270.....	149
Holden v. Phelps, 135 Mass. 61.....	374
Holladay v. Elliott, 3 Or. 340.....	1526
Holland v. Challen, 110 U. S. 19, 3 Sup. Ct. 495, 28 L. ed. 52	1224, 1242, 1243
Holland v. Hallahan (Pa.), 60 Atl. 735.....	1516
Holland v. Mayor etc. of Baltimore, 11 Md. 186, 69 Am. Dec. 195	703, 1227
Holland v. Trotter, 22 Gratt. 136.....	1096
Holland Trust Co. v. Con. Gas. etc. Co., 85 Hun, 455, 32 N. Y. Supp. 830.....	184
Holland Trust Co. v. Sutherland, 177 N. Y. 327, 69 N. E. 647...	80
Hollenback v. Shoyer, 16 Wis. 499.....	1164
Hollenbeak v. McCoy, 127 Cal. 21, 59 Pac. 201.....	1124
Hollenbeck v. Donnell, 94 N. Y. 342, 29 Hun, 94....	167, 168, 176, 177
Holley v. Glover, 36 S. C. 404, 31 Am. St. Rep. 883, 15 S. E. 605, 16 L. R. A. 776.....	1216
Holliday v. Pickhardt, 12 Fed. 147.....	982
Hollinger v. Reeme, 138 Ind. 363, 46 Am. St. Rep. 402, 36 N. E. 1114, 24 L. R. A. 46.....	1120
Hollingsworth v. Floyd, 2 Har. & G. (Md.) 87.....	1506
Hollingsworth v. Sidebottom, 8 Sim. 620.....	1204
Hollins v. Brierfield Coal & Iron Co., 150 U. S. 371, 14 Sup. Ct. 127, 37 L. ed. 1113.....	226, 1456, 1457
Hollis, Ex parte, 59 Cal. 405.....	300, 303
Hollis v. Whiteing, 1 Vern. 151.....	1362
Holloway, In re, 93 Fed. 638.....	1079
Holloway v. Holloway, 97 Mo. 628, 10 Am. St. Rep. 339, 11 S. W. 233	1198
Holloway Bros., Ltd., v. Hill, [1902] 2 Ch. 612.....	517
Holman v. Gill, 107 Ill. 467.....	1202
Holmberg v. Johnson, 45 Kan. 197, 25 Pac. 575.....	1388
Holmes v. Bell, 2 Beav. 290.....	166
Holmes v. Caden, 57 Vt. 111	1351
Holmes v. Calhoun Co., 97 Iowa, 360, 66 N. W. 145.....	913
Holmes v. Chester, 26 N. J. Eq. 81.....	1242
Holmes v. Holmes, 44 Ill. 168.....	1351, 1353
Holmes v. Holmes, 2 Jones Eq. 334.....	1182
Holmes v. Millage, [1893] 1 Q. B. 551.....	120
Holmes v. Sherwood, 16 Fed. 725, 3 McCrary, 405.....	440
Holmes v. Stateler, 57 Ill. 209.....	1119
Holmes v. Steele, 28 N. J. Eq. 173.....	1076
Holmes v. Stix, 104 Ky. 351, 47 S. W. 243.....	113
Holsberry v. Harris (W. Va.), 49 S. E. 404.....	45

Holsman v. Boiling Spring etc. Co., 14 N. J. Eq. 335.....	965
Holst v. Savannah Electric Co., 131 Fed. 931.....	872
Holt v. Corporation of Rochdale, L. R. 10 Eq. 354.....	869, 965
Holt v. Pickett, 111 Ala. 362, 20 South. 432.....	1075
Holt v. Weld, 140 Mass. 578, 5 N. E. 506.....	1226
Holton v. Davis, 108 Fed. 138, 47 C. C. A. 246.....	1104
Holtz v. Diehl, 26 Misc. Rep. 224, 56 N. Y. Supp. 841.....	620
Home Ins. Co. v. Caulk, 86 Md. 385, 38 Atl. 901.....	85, 96, 97
Home Ins. Co. v. Howell, 24 N. J. Eq. 238.....	1127
Home Ins. Co. v. Nobles, 63 Fed. 642.....	483
Home Ins. Co. v. Stanchfield, 1 Dill. 424, 12 Fed. Cas. No. 6660.....	1155
Home Ins. Co. v. Virginia-Carolina Chem. Co., 109 Fed. 681.....	1142
Home Mutual Ins. Co. v. Oregon Ry. & Nav. Co., 20 Or. 569, 23 Am. St. Rep. 151, 26 Pac. 857.....	1496, 1506
Homer v. Barr Pumping Engine Co., 180 Mass. 163, 91 Am. St. Rep. 269, 61 N. E. 883.....	448
Homestead Min. Co. v. Reynolds, 30 Colo. 330, 70 Pac. 422.....	1443
Home etc. Stores v. Colls, [1902] L. R. 1 Ch. 302, 71 L. J. Ch. 146, 85 L. T. 701, 50 Week. Rep. 227; S. C. on appeal, [1904] App. Cas. 179, 212	940, 944, 949, 960
Homfray v. Fothergill, L. R. 1 Eq. 567.....	1272
Honaker v. Board of Education, 42 W. Va. 170, 57 Am. St. Rep. 847, 24 S. E. 544, 32 L. R. A. 413.....	624
Hood v. First Nat. Bank of Fremont, 29 Fed. 55.....	115
Hood v. Lynn, 1 Allen, 103.....	468
Hood v. New York etc. R. Co., 23 Conn. 609.....	1075
Hood v. North East Ry., L. R. 8 Eq. 666, 5 Ch. 525.....	531, 1280
Hook v. Ayres, 64 Fed. 660, 12 C. C. A. 564, 24 U. S. App. 487.....	1424
Hooper v. Central Trust Co., 81 Md. 559, 32 Atl. 505, 29 L. R. A. 262	403
Hooper v. Davies, 70 Ill. App. 682.....	267
Hoover v. Bartlett, 42 Or. 145, 70 Pac. 378.....	1115
Hoover v. Calhoun, 16 Gratt. 109.....	1294
Hoover v. Montclair & Greenwood Lake Ry. Co., 29 N. J. Eq. 4	397, 402, 405, 410
Hopewell v. Kerr, 9 Ind. App. 11, 36 N. E. 48.....	1509
Hopfensack v. Hopfensack, 61 How. Pr. 498.....	428, 432
Hopkins v. Hopkins, 1 Atk. 590.....	1207
Hopkins v. Oxley Stave Co., 83 Fed. 912, 921, 28 C. C. A. 99	1030, 1032, 1035, 1039, 1040, 1049
Hopkins v. Swift, 100 Ky. 14, 37 S. W. 155.....	592
Hopkins v. Toll's Heirs, 4 Humph. 46.....	1183
Hopkins Amusement Co. v. Frohman, 202 Ill. 541, 67 N. E. 391.....	995
Hopper v. Davies, 70 Ill. App. 682.....	1107
Horback's Admr. v. Elder, 18 Pa. St. 33.....	1484
Horn v. Bohn, 96 Md. 8, 53 Atl. 576.....	431
Horn v. Garry, 49 Wis. 464, 5 N. W. 897.....	1233
Horn v. Horn, Amb. 79.....	1415
Horn v. Jones, 28 Cal. 204.....	1248
Hornaday v. State, 62 Kan. 822, 62 Pac. 329.....	586
Horncastle v. Charlesworth, 11 Sim. 315.....	1181, 1210
Horner v. Dey, 61 N. J. Eq. 554, 49 Atl. 154.....	171
Horniblow v. Shirley, 13 Ves. 81.....	1366, 1370
Hornsby v. Eddy, 56 Fed. 461, 5 C. C. A. 560.....	412
Horry v. Glover, Riley Eq. 53, 2 Hill Eq. 515.....	1264
Horsfall v. Ford, 5 Bush (Ky.), 644.....	1204

Horsky v. Helena Cons. Water Co., 13 Mont. 229, 33 Pac. 689..	532
Horton v. Driskell (Wyo.), 77 Pac. 354.....	759
Horton v. Earl of Devon, 4 Welsb. H. & G. 496.....	90
Horton v. White, 84 N. C. 297.....	158
Hosford v. Merwin, 5 Barb. 62	1198
Hosmer v. Wyoming Ry. etc. Co., 65 C. C. A. 81, 129 Fed. 883	1334, 1335
Hospers v. Wyatt, 63 Iowa, 264, 19 N. W. 204.....	600, 610, 616
Hospes v. Northwestern Mfg. etc. Co., 48 Minn. 174, 31 Am. St. Rep. 637, 50 N. W. 1117, 15 L. R. A. 470.....	1457, 1459
Hostetter v. Vowinkle, 1 Dill. 329, Fed. Cas. No. 6714.....	990
Hotchkiss v. Elting, 36 Barb. 38.....	1226
Houck v. Patty, 100 Mo. App. 389, 73 S. W. 389.....	826
Hough v. Cook County Land Co., 73 Ill. 23, 24 Am. Rep. 230....	542
House v. Clemens, 24 Abb. N. C. 381, 9 N. Y. Supp. 484..	498, 534, 1287
House v. Jackson, 24 Or. 89, 32 Pac. 1027.....	1382
Housel v. Conant, 12 Ill. App. 259.....	902
Houston v. Branch Bank, 25 Ala. 250.....	1504
Houston v. Redwine, 85 Ga. 130, 11 S. E. 662.....	283
Houston v. Townsend, 1 Del. Ch. 416, 12 Am. Dec. 109.....	1355
Houston & T. C. Ry. Co. v. State (Tex. Civ. App.), 39 S. W. 390.....	338
Houston & T. C. Ry. Co. v. Stoycharski (Tex. Civ. App.), 35 S. W. 851, 37 S. W. 415.....	351
Houston City St. Ry. Co. v. Storrie (Tex. Civ. App.), 44 S. W. 693.....	351
Hovey v. Bradbury, 112 Cal. 620, 44 Pac. 1077.....	40, 55
Hovnanian v. Bedessern, 63 Ill. App. 353.....	515
How v. Mortell, 28 Ill. 479	1094
Howard v. Howard, 21 D. C. 224.....	1200
Howard v. Leonard, 3 App. Div. 277, 38 N. Y. Supp. 363.....	1421
Howard v. Papera, 1 Madd. (86) 141.....	164
Howard v. Stephenson, 33 W. Va. 116, 10 S. E. 66.....	354, 364
Howard v. Woodward, 10 Jur. N. S., 1123.....	537
Howarth v. Angle, 162 N. Y. 179, 56 N. E. 489, 47 L. R. A. 725	439, 442, 448
Howarth v. Lombard, 175 Mass. 570, 56 N. E. 888, 49 L. R. A. 301.....	359, 448
Howd v. Breckenridge, 97 Mich. 65, 56 N. W. 221.....	1441
Howe v. Babcock, 72 Ill. App. 68.....	1436
Howe v. Duel, 43 Barb. 505.....	209
Howe v. Dunlap, 127 Okla. 467, 72 Pac. 365.....	594
Howe v. Harper, 127 N. C. 356, 37 S. E. 505.....	351
Howe v. Jones, 57 Iowa, 130, 8 N. W. 451, 10 N. W. 299.....	261
Howe v. Jones, 66 Iowa, 156, 23 N. W. 376.....	432
Howe v. Nickerson, 14 Allen, 400.....	1271
Howe v. Smith, L. R. 27 Ch. D. 89, 98.....	1343
Howe v. Watson, 179 Mass. 30, 60 N. E. 415.....	1295
Howell v. Buffalo, 2 Abb. App. Dec. 412	1228, 1235
Howell v. City of Peoria, 90 Ill. 104.....	598, 680
Howell v. City of Tacoma, 3 Wash. 711, 28 Am. St. Rep. 83, 24 Pac. 449.....	747
Howell v. Hough, 46 Kan. 152, 26 Pac. 436.....	107, 286
Howell v. Jump, 140 Mo. 441, 41 S. W. 976.....	58
Howell v. Mills, 56 N. Y. 227.....	1187
Howell v. Ripley, 10 Paige, 43.....	184

Howell v. Thompson , 95 Tenn. 396, 32 S. W. 309.....	1437
Howell Co. v. Pope etc. Co. , 171 Ill. 350, 49 N. E. 497.....	946
Howe Scale Co. v. Wycoff , 198 U. S. 118, 25 Sup. Ct. 608, 49 L. ed. — (overruling 122 Fed. 348, 58 C. C. A. 510).....	997
Howey v. Goings , 13 Ill. 95, 46 Am. Dec. 427.....	1182
Howland v. Norris , 1 Cox C. C. 59, 61.....	1364, 1366
Howle v. North Birmingham Land Co. , 95 Ala. 389, 11 South. 15.....	1161
Hoxie v. Chaney , 143 Mass. 592, 58 Am. Rep. 149, 10 N. E. 713..	990
Hoy v. Sweetman , 19 Nev. 376, 12 Pac. 504.....	830
Hoyle v. Huson , 1 Dev. 348.....	1194
Hoyt v. Fuller , 19 N. Y. Supp. 962.....	497, 520
Hoyt v. Gouge (Iowa) , 101 N. W. 464.....	78
Hoyt v. Latham , 143 U. S. 553, 12 Sup. Ct. 568, 36 L. ed. 259..	47, 55
Hoyt v. McKenzie , 3 Barb. Ch. 320.....	989
Hoyt v. McLaughlin , 52 Wis. 280, 8 N. W. 889.....	1516
Hoyt v. Tuxbury , 70 Ill. 333, 336	1321
Hubbard v. Camperdown Mills , 25 S. C. 496, 1 S. E. 5.....	396
Hubbard v. Curtis , 8 Iowa, 1, 74 Am. Dec. 283.....	1535
Hubbard v. Hamilton Bank , 7 Met. 340.....	290
Hubbard v. Hubbard , 2 Hem. & M. 38.....	1215
Hubbard v. Hubbard , 14 Md. 356.....	199
Hubbard v. International Merc. Agency (N. J. Eq.) , 59 Atl. 24.....	1152
Hubbard v. Manhattan Trust Co. , 87 Fed. 51, 30 C. C. A. 520..	54
Hubbard v. Miller , 27 Mich. 15, 15 Am. Rep. 153.....	523
Hubbard v. Ricart , 3 Vt. 207, 23 Am. Dec. 198.....	1196
Hubbard v. State (Neb.) , 100 N. W. 153.....	1111
Hubbard v. Thompson , 14 Fed. 689.....	986
Hubbell v. Avenue Investment Co. , 97 Iowa, 135, 66 N. W. 85	175, 178
Hubbell v. Dana , 9 How. Pr. (N. Y.) 424.....	336
Hubbell v. Van Schoening , 49 N. Y. 326, 331...1331, 1335, 1336, 1337	
Huber v. Merkel , 117 Wis. 355, 98 Am. St. Rep. 355, 94 N. W. 354.....	898
Huck v. Chicago & A. R. Co. , 86 Ill. 360.....	677, 681, 682
Hudkins v. Ward , 30 W. Va. 204, 8 Am. St. Rep. 22, 3 S. E. 600	1400, 1404
Hudson v. Barham , 101 Va. 63, 99 Am. St. Rep. 849, 43 S. E. 189	567
Hudson v. Cripps , [1896] 1 Ch. 265.....	516
Hudson v. Dismukes , 77 Va. 242.....	1399
Hudson v. Plets , 11 Paige, 183.....	1418
Hudson v. Voreis , 134 Ind. 602, 34 N. E. 503.....	765
Hudson v. Wood , 119 Fed. 764.....	1426
Hudson River Tel. Co. v. Watervliet Turnpike & R. Co. , 135 N. Y. 393, 31 Am. St. Rep. 838, 32 N. E. 148, 17 L. R. A. 674....	1066
Hudspeth v. Hall , 113 Ga. 4, 84 Am. St. Rep. 200, 38 S. E. 358....	585
Huellmantel v. Huellmantel , 124 Cal. 583, 589, 57 Pac. 582.....	257
Huels v. Hahn , 75 Wis. 468, 44 N. W. 507.....	590
Huettinger v. Huettinger (N. J. Eq.) , 43 Atl. 574.....	1126
Huff v. Miller (Tenn. Ch. App.) , 58 S. W. 876.....	1099
Huffman v. Caudle , 86 Ind. 591.....	1394
Huffman v. Huffman , 1 Lea, 491.....	1227
Hug v. Van Burkleo , 58 Mo. 202	1275, 1327
Huggins v. Huggins , 117 Ga. 151, 43 S. E. 759.....	148
Huggins v. King , 3 Barb. 616.....	1094
Huggins v. White , 7 Tex. Civ. App. 563, 27 S. W. 1066.....	1134

Hugh v. McRae , Chase Dec. 466.....	208
Hughes v. Devlin , 23 Cal. 504.....	1188, 1189, 1534
Hughes v. Dobbs , 84 Tex. 502, 19 S. W. 684.....	608
Hughes v. Hannah , 35 Fla. 365, 22 South. 613.....	1244
Hughes v. Hatchett , 55 Ala. 631.....	167, 197
Hughes v. Hughes , 63 How. Pr. 408.....	1195
Hughes v. Jones , 3 De Gex, F. & J. 307.....	1366
Hughes v. Linn County , 37 Or. 111, 60 Pac. 843.....	735, 1225
Hughes v. New York El. R. Co. , 130 N. Y. 14, 28 N. E. 765.....	777, 780, 781
Hughlett v. Harris , 1 Del. Ch. 349, 12 Am. Dec. 104.....	817
Huguenin v. Basely , 13 Ves. 105.....	156
Huidekoper v. Locomotive Works , 99 U. S. 258, 25 L. ed. 344....	420
Hulen v. Earel , 13 Okla. 246, 73 Pac. 927.....	524
Hulett v. Hamilton , 60 Minn. 21, 61 N. W. 672.....	1124
Hulett v. Inlow , 57 Ind. 412, 26 Am. Rep. 64.....	493
Hulett v. Soulard , 26 Vt. 295.....	1479
Huling v. Ehrich , 183 Ill. 315, 55 N. E. 636	678
Hull v. Clark , 22 Miss. (14 Smedes & M.) 187.....	1264
Hull v. Myers , 90 Ga. 674, 16 S. E. 653.....	1509
Hull v. Pitrat , 45 Fed. 94.....	1267
Hull v. Thomas , 3 Edw. Ch. 236	303, 304
Hull's Admr. v. Hull's Heirs , 35 W. Va. 155, 29 Am. St. Rep. 800, 13 S. E. 49.....	1500, 1511
Humboldt County v. Lander County , 22 Nev. 248, 58 Am. St. Rep. 750, 38 Pac. 578, 26 L. R. A. 749.....	1173, 1174
Humphrey v. Clement , 44 Ill. 299, 302	1369, 1371
Humphreys v. Harrison , 1 Jacob & W. 581.....	816
Humphreys v. Hopkins , 81 Cal. 551, 15 Am. St. Rep. 176, 22 Pac. 892, 6 L. R. A. 792.....	445
Humpich v. Drake (Ky.) , 44 S. W. 632.....	1137
Hundley v. Farris , 103 Mo. 78, 23 Am. St. Rep. 863, 15 S. W. 312, 12 L. R. A. 254.....	1536
Hungerford v. Sergerson , 20 How. 156, 15 L. ed. 869.....	1077
Hunnewell v. Charleston , 106 Mass. 350	704
Hunnewell v. Taylor , 6 Cush. 472.....	1194
Hunt v. Acre , 28 Ala. 580.....	1226
Hunt v. American Grocery Co. , 80 Fed. 70.....	226
Hunt v. American Grocery Co. , 81 Fed. 532	548
Hunt v. Coggin , 66 N. H. 140, 20 Atl. 250.....	901
Hunt v. Columbia Ins. Co. , 55 Me. 290, 92 Am. Dec. 592.....	379, 380, 443, 455
Hunt v. Field , 9 N. J. Eq. 36, 57 Am. Dec. 365....	1430, 1449, 1451
Hunt v. Gorden , 52 Miss. 194.....	1527
Hunt v. Hazelton , 5 N. H. 216, 20 Am. Dec. 575.....	1194
Hunt v. Hunt , 45 N. J. Eq. 360, 13 Atl. 248, 19 Atl. 623.....	1488
Hunt v. Le Grand R. Skating Rink Co. , 143 Ill. 118, 32 N. E. 525. 238	
Hunt v. Peake, Johns , 705, 6 Jur., N. S., 1071	872
Hunt v. Rhodes , 1 Pet. 1, 7 L. ed. 27.....	1142
Hunt v. Sain , 180 Ill. 372, 54 N. E. 970.....	955
Hunt v. Townsend , 4 Sandf. Ch. 510.....	1404
Hunt v. Wright , 47 N. H. 399, 93 Am. Dec. 451.....	1193
Hunter v. Brown , 7 B. Mon. 284.....	1202
Hunter v. Daniel , 4 Hare, 420, 433.....	1331
Hunter v. Hunter , 63 S. C. 78, 90 Am. St. Rep. 663, 41 S. E. 33	1500, 1510

Hunter v. Kansas City etc. Bank, 158 Mo. 262, 38 S. W. 1053.	1075
Hunter v. Manhattan R. Co., 141 N. Y. 281, 36 N. E. 400.	779, 780, 781
Hunter v. McDevitt (N. D.), 97 N. W. 869.	1385
Hunter v. Wilcox, 23 Pa. Co. Ct. Rep. 191.	946
Hunting v. Hartford St. Ry. Co., 73 Conn. 179, 46 Atl. 824.	821
Huntington v. Cast, 149 Ind. 255, 48 N. E. 1025.	592
Huntington v. Central Pacific R. R., 2 Saw. 503, Fed. Cas. No. 6911.	1237
Huntington v. Crouter, 33 Or. 408, 72 Am. St. Rep. 726, 54 Pac. 208.	1113, 1114
Huntington v. Jones, 72 Conn. 45, 43 Atl. 564.	1425
Huntington v. New York, 118 Fed. 683.	483
Huntington v. Palmer, 7 Saw. 355, 8 Fed. 449.	662
Huntington v. The Advance, 72 Fed. 793, 19 C. C. A. 194.	1508
Hupfeld v. Automaton Piano Co., 66 Fed. 788.	330
Hurd v. City of Elizabeth, 41 N. J. L. 1.	438, 439
Hurlburt v. Carter, 39 Fed. 802.	984
Hurlburt v. Thomas, 55 Conn. 181, 3 Am. St. Rep. 43, 10 Atl. 556.	1124
Huron v. Bank of Volga, 8 S. Dak. 449, 66 N. W. 815.	930
Hursh v. Hursh, 99 Ind. 500.	168
Hurt v. City of Atlanta, 100 Ga. 280, 28 S. E. 65.	786
Husband v. Aldrich, 135 Mass. 317.	1212
Huss v. Morris, 63 Pa. St. 367.	1144
Hussey v. Gallagher, 61 Ga. 86.	559
Huston v. Rentlinger, 91 Ky. 333, 34 Am. St. Rep. 225, 15 S. W. 867.	556
Hutchinson v. American Palace-Car Co., 104 Fed. 182.	205, 208
Hutchinson v. First Nat. Bank, 133 Ind. 271, 36 Am. St. Rep. 537, 30 N. E. 952.	266, 272
Hutchinson v. Skinner, 21 Misc. Rep. 729, 49 N. Y. Supp. 360.	581
Hutson v. Hutson, 139 Mo. 229, 40 S. W. 886.	1194
Hutton v. Laws, 55 Iowa, 710, 8 N. W. 642.	1530
Hutton v. Williams, 35 Ala. 503, 76 Am. Dec. 297.	1217
Hybart, In re, 119 N. C. 359, 25 S. E. 963.	139
Hyde v. Lynde, 4 N. Y. 387.	567
Hyde v. Weitzner, 45 Minn. 35, 47 N. W. 311.	202
Hyde Park Gas Co. v. Kerber, 5 Ill. App. 132.	215
Hyer v. Richmond Traction Co., 168 U. S. 471, 18 Sup. Ct. 114, 42 L. ed. 547.	1272
Hygienic Fleeced Underwear Co. v. Way (C. C. A.), 137 Fed. 592.	994
Hyland v. Brazil Block Coal Co., 128 Ind. 335, 26 N. E. 672.	689
Hyland v. Central I. & S. Co., 129 Ind. 68, 28 N. E. 308, 13 L. R. A. 515.	689
Hyman v. Cameron, 46 Miss. 725.	83
Hyman v. Kelly, 1 Nev. 179.	167

I

Iasigi v. Chicago etc. R. R., 129 Mass. 46.	1396
Iauch v. De Socarras, 56 N. J. Eq. 527, 39 Atl. 381.	1449, 1450
Idaho Gold Reduction Co. v. Croghan, 6 Idaho, 471, 56 Pac. 164.	378
Ide v. Leiser, 10 Mont. 5, 24 Am. St. Rep. 17, 24 Pac. 695.	1296
Ide v. Trorlicht, Dunker & Renard Carpet Co., 115 Fed. 137, 148	37, 50, 981

Ideal Clothing Co. v. Hazle , 126 Mich. 262, 8 Detroit Leg. N. 20, 85 N. W. 735.....	1410
Ikerd v. Beavers , 106 Ind. 483, 7 N. E. 326.....	1293
Illingworth v. Rowe , 52 N. J. Eq. 360, 28 Atl. 456.....	99
Illinois Cent. R. Co. v. Caffrey , 128 Fed. 770.....	1063
Illinois Cent. R. Co. v. Hodges , 113 Ill. 323.....	676, 681, 682
Illinois Cent. R. Co. v. Thomas , 75 Miss. 54, 21 South. 601.....	931
Illinois Commission Co. v. Cleveland Tel. Co. , 119 Fed. 301, 56 C. C. A. 205	987
Illinois Land & Loan Co. v. Bonner , 75 Ill. 315.....	1213
Illinois Malleable Iron Co. v. Graham , 55 Ill. App. 266.....	1436
Illinois Steel Co. v. Putnam , 68 Fed. 515, 15 C. C. A. 556. .295, 326, 327	
Illinois Trust & Sav. Bank v. Ottumwa El. Ry. , 89 Fed. 235....	422
Illinois Trust Co. v. Dowd , 105 Fed. 123, 44 C. C. A. 389, 52 L. R. A. 481	422
Imlay v. Norwich & W. R. Co. , 4 Blatchf. 227, 1 Fish. Pat. Cas. 340, Fed. Cas. No. 7012.....	978.
Imperial Fire Ins. Co. v. Gunning , 81 Ill. 236.....	1087
Importers' Nat. Bank v. Quackenbush , 143 N. Y. 567, 38 N. E. 728.....	116
Inchbald v. Barrington , L. R. 4 Ch. 388.....	881
Inchbald v. Robinson , L. R. 4 Ch. 388.....	923
Indianapolis Rolling Mill Co. v. Indianapolis , 29 Ind. 245.....	858
Indianapolis Water Co. v. American etc. Co. , 57 Fed. 1000, affirm- ing 53 Fed. 970.....	925
Indian Land & Trust Co. v. Shoenfelt (C. C. A.) , 135 Fed. 484..	821
Ingalls v. Merchants' Nat. Bank , 51 App. Div. 305, 64 N. Y. Supp. 911.....	1092
Inge v. Board of Public Works , 135 Ala. 187, 93 Am. St. Rep. 20, 53 Fed. 970	925
Ingersoll v. Rousseau , 35 Wash. 92, 76 Pac. 513.....	872
Ingle v. Bottoms , 160 Ind. 73, 66 N. E. 160.....	516
Ingraham v. Dyer , 125 Mo. 491, 28 S. W. 840.....	1130
Ingraham v. Mariner , 194 Ill. 269, 62 N. E. 609.....	1189
Inhabitants of Crawford Township v. Watters , 61 N. J. Eq. 284, 48 Atl. 316.....	1518
Inman v. Prout , 90 Ala. 362, 372, 7 South. 842.....	1184
Insurance Co. v. Bailey , 13 Wall. 616, 20 L. ed. 501.....	1156
Insurance Co. of North America v. Bonner , 7 Colo. App. 97, 42 Pac. 681.....	670
Insurance Co. of North America v. Bonner , 24 Colo. 220, 49 Pac. 366.....	670, 671
Insurance Co. of North America v. Schall , 96 Md. 225, 53 Atl. 925, 61 L. R. A. 300.....	1269
International & G. N. R. Co. v. Herndon , 11 Tex. Civ. App. 465, 33 S. W. 377.....	396
International B. & T. Co. v. Holland Trust Co. , 26 C. C. A. 469, 81 Fed. 422.....	30
International Com. Y. W. C. A. v. Young Women's Christian Assn. , 194 Ill. 194, 62 N. E. 551, 56 L. R. A. 888.....	998
International Silver Co. v. Wm. H. Rogers Corp. (N. J. Eq.) , 60 Atl. 187.....	997, 998
International Trading Stamp Co. v. Memphis , 101 Tenn. 181, 47 S. W. 136.....	605, 606
International Trust Co. v. American Loan etc. Co. , 62 Minn. 501, 65 N. W. 78, 632.....	241

International Trust Co. v. International Loan & Trust Co., 153 Mass. 271, 26 N. E. 693, 10 L. R. A. 758.....	999
International Trust Co. v. T. B. Townsend etc. Co., 37 C. C. A. 396, 95 Fed. 850	415
International Trust Co. v. United Coal Co., 27 Colo. 246, 83 Am. St. Rep. 59, 60 Pac. 621.....	227, 403
Inter-Ocean Pub. Co. v. Associated Press, 184 Ill. 438, 75 Am. St. Rep. 184, 56 N. E. 822, 48 L. R. A. 568.....	556
Iowa Sav. & L. Assn. v. Chase, 118 Iowa, 51, 91 N. W. 807.....	1118
Irby v. Livingston, 81 Ga. 281, 6 S. E. 591.....	1512
Ireland v. Kelly, 60 N. J. Eq. 308, 47 Atl. 51.....	70
Irick v. Black, 17 N. J. Eq. 189.....	1491, 1494
Iron Age Publishing Co. v. Western Union Tel. Co., 83 Ala. 498, 3 Am. St. Rep. 758, 3 South. 449.....	498, 1294, 1299
Iron Co. v. Hayes, 165 Pa. St. 489, 30 Atl. 936.....	1467
Iron R. R. Co. v. Fink, 41 Ohio St. 321, 52 Am. Rep. 84.....	1396
Iroquois Furnace Co. v. Kimbark, 85 Ill. App. 399.....	277, 278
Irvin v. Bleakley, 67 Pa. St. 24, 28.....	1331
Irvin v. Gregory, 13 Gray, 215.....	1332
Irvine v. Armstrong, 31 Minn. 216, 17 N. W. 343.....	1259
Irvine v. Atlantic etc. Co., 42 N. Y. Supp. 1103.....	931
Irwin v. Dane, 4 Fish. Pat. Cas. 359, Fed. Cas. No. 7081.....	984
Irwin v. Dixon, 50 U. S. (9 How.) 10, 28, 29 13 L. ed. 25. 879, 883	
Irwin v. Everson, 95 Ala. 64, 10 South. 320.....	111, 143, 261
Irwin v. Granite State Prov. Assn., 56 N. J. Eq. 244, 38 Atl. 680..	451
Irwin v. McKechnie, 58 Minn. 145, 49 Am. St. Rep. 495, 59 N. W. 987, 26 L. R. A. 218.....	340, 342
Isaac v. Swift, 10 Cal. 71, 70 Am. Dec. 698.....	1118
Isenberg v. East India House Co., 3 De Gex, J. & S. 263.....	1070
Itasca v. Schroeder, 182 Ill. 192, 55 N. E. 50.....	836
Ives v. Edison, 124 Mich. 402, 83 Am. St. Rep. 329, 83 N. W. 120, 50 L. R. A. 134.....	951, 956
Ives v. Irey, 51 Neb. 136, 70 N. W. 961.....	718
Ivimey v. Stocker, L. R. 1 Ch. App. 396.....	941, 946
Ivory v. Kempner, 2 Tex. Civ. App. 474, 21 S. W. 1006.....	1134

J

Jackson v. Bell, 31 N. J. Eq. 554, 32 N. J. Eq. 411.....	1089
Jackson v. Boyd (Ark.), 87 S. W. 126.....	59
Jackson v. Bradhurst, 16 Misc. Rep. 149, 37 N. Y. Supp. 1068....	1217
Jackson v. Byrnes, 103 Tenn. 698, 54 S. W. 984.....	524, 526
Jackson v. Cator, 5 Ves. 688.....	806
Jackson v. Deese, 35 Ga. 88.....	1189, 1534
Jackson v. De Forest, 14 How. Pr. 81.....	142
Jackson v. Duke of Newcastle, 3 De Gex, J. & S. 275.....	944
Jackson v. Edwards, 7 Paige, 411.....	1206
Jackson v. Hooper, 107 Ala. 634, 18 South. 254.....	167, 171
Jackson v. Jackson, 84 Ala. 343, 4 South. 174.....	99
Jackson v. Jackson, 17 Or. 110, 19 Pac. 847.....	851
Jackson v. King, 9 Kan. App. 160, 58 Pac. 1013.....	105, 107
Jackson v. Knickerbocker Athletic Club, 49 App. Div. 107, 62 N. Y. Supp. 1109.....	82
Jackson v. Leaf, 1 Jacob & W. 229.....	1082
Jackson v. Lever, 3 Bro. C. C. 605	1392

Jackson v. Lynn , 94 Iowa, 151, 58 Am. St. Rep. 386, 62 N. W. 704	1162
Jackson v. Myers , 14 Johns. 354	1203
Jackson v. Newark , 53 N. J. Eq. 322, 31 Atl. 233	611
Jackson v. New York , 62 App. Div. 46, 70 N. Y. Supp. 877.....	722
Jackson v. Normanby etc. Co. , [1899] L. R. 1 Ch. 438.....	955
Jackson v. Pierce , 10 Johns. 417	1205
Jackson v. Sheldon , 9 Abb. Pr. 127	200
Jackson v. Stanfield (1893), 137 Ind. 592, 608, 36 N. E. 345, 37 N. E. 14, 23 L. R. A. 588	1048
Jackson v. Stevenson , 156 Mass. 496, 32 Am. St. Rep. 476, 31 N. E. 691	508
Jackson v. Torrence , 83 Cal. 521, 23 Pac. 695	1369
Jacksonport v. Watson , 33 Ark. 704	598, 600
Jackson's Case , Lane, 60	1385
Jacksonville v. Massey Business College (Fla.), 36 South. 432..	674
Jacksonville Ferry v. Stockton , 40 Fla. 141, 23 South. 557.....	261, 266, 268
Jacob v. Day , 111 Cal. 571, 44 Pac. 243	894
Jacob v. Howard , 15 Ky. Law Rep. 133, 22 S. W. 332.....	1418
Jacobs v. Cohen , 99 App. Div. 481, 90 N. Y. Supp. 854.....	1016
Jacobs v. Gibson , 9 Neb. 380, 2 N. W. 893	168, 180
Jacobs v. Mexican Sugar Co. , 130 Fed. 589.....	1468
Jacobsmeier v. Jacobsmeier , 88 Mo. App. 102.....	1484
Jacobson v. Blackhurst , 2 Johns. & H. 486.....	82
Jacobson v. Brooklyn El. R. Co. , 22 Misc. Rep. 281, 48 N. Y. Supp. 1072.....	781
Jacobson v. Landolt , 73 Wis. 142, 9 Am. St. Rep. 767, 40 N. W. 636....	303
Jacobson v. Van Boening , 48 Neb. 80, 48 Am. St. Rep. 684, 66 N. W. 993, 32 L. R. A. 229	872, 925
Jacomb v. Knight , 3 De Gex, J. & S. 533	1070
Jacomb v. Knight , 32 L. J. Ch., N. S., 600, 11 Week. Rep. 812, 8 L. T., N. S., 621	963
Jaquelin v. Erie R. Co. (N. J.), 61 Atl. 18	1062, 1069
James v. Central Trust Co. , 98 Fed. 489, 39 C. C. A. 126	1079
James v. Pritchard , 7 Mees. & W. 216	91
Jameson v. Rixey , 94 Va. 342, 64 Am. St. Rep. 726, 26 S. E. 861.46, 52 James T. Hair Co. v. Huckins, 56 Fed. 366, 5 C. C. A. 522, 12 U. S. App. 359	530
Jamieson v. Kings Co. El. R. Co. , 147 N. Y. 322, 41 N. E. 693..	781
Jamison v. May , 13 Ark. 600	1077
Jamison v. Weaver , 84 Iowa, 611, 51 N. W. 65	1114
Jandorf v. Patterson , 90 Mich. 40, 51 N. W. 352	1162, 1165
J. & P. Coats, Ltd., v. John Coates Thread Co. , 135 Fed. 177..	997, 998
Janes v. Howell , 37 Neb. 320, 40 Am. St. Rep. 494, 55 N. W. 965..	1120
Janesville v. Carpenter , 77 Wis. 288, 20 Am. St. Rep. 123, 46 N. W. 128, 8 L. R. A. 808	970
Janney v. Pan-Coast Ventilator & Mfg. Co. , 128 Fed. 121....	996
Jarboe v. Kepler , 4 Ind. 177	1096
Jarnigan v. Levisy , 6 Lea, 397	1294
Jarrett v. Goodnow , 39 W. Va. 602, 20 S. E. 575, 32 L. R. A. 321..	1086
Jarvis v. McQuaide , 24 Misc. Rep. 17, 53 N. Y. Supp. 97.....	174
Jarvis v. Peck , 10 Paige, 118	524

Jasper Land Co. v. Wallis, 123 Ala. 652, 26 South. 659	225
Jay, Case of, 6 Abb. Pr. (N. Y.) 293	336
Jay, Ex parte, L. R. 9 Ch. App. 133	256
Jay v. Michael, 92 Md. 198, 48 Atl. 61	936, 940
Jayne v. Hymer, 66 Neb. 785, 92 N. W. 1019.....	1423
J. B. Brown Co. v. Henderson, 123 Ala. 623, 26 South. 199....	1443
Jeans Clothing Co. v. Watson et al. (1902), 168 Mo. 133, 67 S. W. 391	1013
Jefferson v. Edrington, 53 Ark. 545, 14 S. W. 99, 903.....	367, 398
Jefferys v. Smith, 1 Jacob & W. 298.....	150
Jeffreys v. Jeffreys, Craig & P. 139	1286
Jeffries-Ba Som v. Nation, 63 Kan. 247, 65 Pac. 226.....	696
Jelke v. Goldsmith, 52 Ohio St. 499, 49 Am. St. Rep. 730, 40 N. E. 167	17
Jenkins v. Auburn City Ry. Co., 27 App. Div. 553, 50 N. Y. Supp. 852	543
Jenkins v. Board of Supervisors of Rock County, 15 Wis. 11..	753, 756
Jenkins v. Craig, 22 Ind. App. 192, 52 N. E. 423, 53 N. E. 427..	1486
Jenkins v. Fahey, 73 N. Y. 355	1187, 1295
Jenkins v. Hiles, 6 Ves. 646, 655	1329
Jenkins v. Jenkins, 1 Paige, 243	165
Jenkins v. Lockard's Admr., 66 Ala. 377	1487
Jenks v. Horton, 96 Mich. 13, 55 N. W. 372.....	204
Jenks v. Pawlowski, 98 Mich. 110, 39 Am. St. Rep. 522, 56 N. W. 1105, 22 L. R. A. 863	502, 505
Jennings v. Beale, 158 Pa. St. 283, 27 Atl. 948	33, 848
Jennings v. Moon, 135 Ind. 168, 34 N. E. 996.....	1244
Jennings v. Philadelphia etc. R. R. Co., 23 Fed. 569.....	452
Jennings v. Shiner (Tex. Civ. App.), 43 S. W. 276.....	1118
Jerome v. Ross, 7 Johns. Ch. 315, 11 Am. Dec. 484.....	779, 822, 823, 824, 832
Jersey City v. Gardner, 33 N. J. Eq. 622	766
Jersey City v. Lembeck, 31 N. J. Eq. 255.....	1242, 1249
Jersey City Milling Co. v. Blackwell, 58 N. J. Eq. 122, 44 Atl. 153, 49 Cent. L. J. 441	571
Jersey City Printing Co. v. Cassidy, 63 N. J. Eq. 759, 763, 53 Atl. 230	1009, 1011, 1017, 1020, 1024, 1027
Jervis v. Berridge, L. R. 8 Ch. 351	1165
Jervis v. Smith, Hoff. Ch. 470	1347
Jessup v. Cook, 6 N. J. L. 434	1527
Jesus College v. Bloom, Amb. 54, 3 Atk. 262.....	814
Jew v. Wood, 3 Beav. 579	91
Jew v. Wood, Craig & P. 185	84
Jewell v. Lee, 14 Allen, 145, 92 Am. Dec. 744.....	505
Jewett v. Feldheiser, 68 Ohio St. 523, 67 N. E. 1072.....	1501
J. I. Case Plow Works v. Finks, 81 Fed. 529, 26 C. C. A. 46....	339
Joesting v. Mayor, 97 Md. 589, 55 Atl. 456..	702
John v. John, [1898] 2 Ch. 573	155
John v. Jones, 16 Ala. 454	1489
John D. Park & Sons Co. v. National Wholesale Druggists' Assn., 175 N. Y. 1, 67 N. E. 136	1050
John Hancock Mut. L. Ins. Co. v. Dick, 114 Mich. 337, 72 N. W. 179, 43 L. R. A. 566	1152, 1155
John L. Roper Lumber Co. v. Wallace, 93 N. C. 23.....	158
Johns v. Johns, 23 Ga. 31	164

Johnson v. Aldrich, 40 Fed. 675	984
Johnson v. Atkinson, 2 Anstr. 798	76, 90
Johnson v. Atlantic City Gas & W. Co. (N. J.), 56 Atl. 550.....	1063
Johnson v. Black (Va.), 49 S. E. 633	617
Johnson v. Conger, 14 Abb. Pr. 95	1328
Johnson v. Cooper, 2 Yerg. 524, 24 Am. Dec. 502	1226
Johnson v. Central Trust Co., 159 Ind. 605, 65 N. E. 1028.....	436
Johnson v. Christian, 128 U. S. 374, 9 Sup. Ct. 87, 31 L. ed. 820..	1086
Johnson v. Conn. Bank, 21 Conn. 148	482
Johnson v. Duer, 115 Mo. 366, 21 S. W. 800.....	713
Johnson v. Farnum, 56 Ga. 144	198, 200
Johnson v. Gibson, 116 Ill. 302, 6 N. E. 205.....	29, 30, 31
Johnson v. Gilmer, 113 Ga. 1146, 39 S. E. 469	577
Johnson v. Hahn, 4 Neb. 139	716, 1228
Johnson v. Hanye, 103 Ga. 542, 29 S. E. 914.....	1136
Johnson v. Harvey, 84 N. Y. 363, 38 Am. Rep. 515.....	1482
Johnson v. Heidenheimer, 65 Tex. 263	1430
Johnson v. Holland, 17 Tex. 210, 43 S. W. 71.....	742
Johnson v. Hubbell, 10 N. J. Eq. 332, 64 Am. Dec. 773.....	
.....	1259, 1260, 1261, 1358
Johnson v. Hughes, 58 N. J. Eq. 406, 43 Atl. 901.....	848
Johnson v. Lehigh Val. Traction Co., 130 Fed. 932.....	392
Johnson v. Macey, 43 Ala. 521	101
Johnson v. Milwaukee, 40 Wis. 315, 327	757
Johnson v. Moser, 72 Iowa, 523, 34 N. W. 314.....	1185
Johnson v. Moyse (Miss.), 12 South. 483	1399
Johnson v. Olmstead, 49 Conn. 517	1216
Johnson v. Peterson, 90 Minn. 506, 97 N. W. 384.....	1243
Johnson v. Seabury (N. J. Eq.), 61 Atl. 5.....	994
Johnson v. Sherwood (Ind. App.), 73 N. E. 180	1139
Johnson v. Shrewsbury etc. Co., 3 De Gex, M. & G. 914.....	1275
Johnson v. Superior Court, 65 Cal. 567, 4 Pac. 575.....	920
Johnson v. Taylor, 106 Ind. 89, 5 N. E. 732.....	1244
Johnson v. Torpy, 35 Neb. 604, 37 Am. St. Rep. 447, 53 N. W.	
575	1484
Johnson v. Tucker, 2 Tenn. Ch. 398	188
Johnson v. Upper (Wash.), 80 Pac. 801	1353
Johnson v. Waters, 111 U. S. 667, 4 Sup. Ct. 619, 28 L. ed. 556..	1099
Johnson v. Woodruff, 8 N. J. Eq. 120	192
Johnson v. Wyatt, 33 L. J. Ch. 394, 397	944
John Spry Lumber Co. v. Chappell, 184 Ill. 539, 56 N. E. 794	
(affirming 85 Ill. App. 223).....	1447
Johnston v. Hyde 25 N. J. Eq. 454, 33 N. J. Eq. 632	959
Johnston v. Jones, 23 N. J. Eq. 216.....	551
Johnston v. Lewis, 4 Abb. Pr., N. S., 150.....	91
Johnston v. Oliver, 51 Ohio St. 6, 36 N. E. 458.....	72, 85
Johnston v. Powers, 21 Neb. 292, 32 N. W. 62.....	263, 352, 362
Johnston v. Roe, 1 McCrary, 161, 1 Fed. 692, 695	39
Johnston v. Standard Min. Co., 148 U. S. 360, 13 Sup. Ct. 585, 37	
L. ed. 480, affirming 39 Fed. 304	47, 54, 60
Johnston v. Straus, 4 Hughes, 636, 26 Fed. 57	1426
Johnston v. Hall, 2 Kay & J. 414	517
John V. Farwell Co. v. Hilbert, 91 Wis. 437, 65 N. W. 172, 30	
L. R. A. 235	1119
Jolland v. Jolland, 8 Ves. 72	279

Jolly v. Arbuthnot, 4 De Gex & J. 224	166
Jonas v. Cincinnati, 18 Ohio, 318	728
Jonathan Mills Mfg. Co. v. Whitehurst, 60 Fed. 81	37, 40
Jones v. Bank of Leadville, 10 Colo. 464, 17 Pac. 272.....	118, 208
Jones v. Britton, 102 N. C. 166, 9 S. E. 554, 4 L. R. A. 178.....	803, 817
Jones v. Browne, 32 W. Va. 444, 9 S. E. 873	330
Jones v. Chappell, L. R. 20 Eq. 539	923
Jones v. Commercial Bank of Columbia, 6 Miss. 43, 35 Am. Dec. 419	1113, 1114, 1120
Jones v. Commissioners of Granville, 77 N. C. 280.....	592
Jones v. Conn, 39 Or. 30, 87 Am. St. Rep. 634, 64 Pac. 855, 65 Pac. 368, 54 L. R. A. 630	968
Jones v. Cullen, 142 Ind. 335, 40 N. E. 124	688
Jones v. Danforth (Neb.), 99 N. W. 495	1437
Jones v. Davis, 35 Ohio St. 474	727
Jones v. De Graffenreid, 60 Ala. 145	1226, 1228, 1232
Jones v. Dougherty, 10 Ga. 273	163
Jones v. Goodrich, 10 Sim. 327	140
Jones v. Hays, 3 Ired. Eq. (38 N. C.) 502, 44 Am. Dec. 78	1477
Jones v. Johnson, 28 Ark. 211	1212
Jones v. Jones, 3 Mer. 160	838, 840
Jones v. Jones, 71 Wis. 514, 38 N. W. 88	1169, 1171
Jones v. Keen, 115 Mass. 170	427
Jones v. McNealy, 139 Ala. 379, 101 Am. St. Rep. 38, 35 South. 1022 ..	1145
Jones v. McPhillips, 77 Ala. 314	162
Jones v. Martin, 5 Ves. 266	1259, 1260
Jones v. Massey, 14 S. C. 292	1523
Jones v. Moore, 106 Tenn. 188, 61 S. W. 81.....	334
Jones v. Neale, 2 P. & H. 339	1227
Jones v. New England Mtg. Sec. Co. (Wash.), 80 Pac. 796....	1139
Jones v. North, L. R. 19 Eq. 426	528
Jones v. Oemler, 110 Ga. 202, 35 S. E. 375	793
Jones v. Parker, 163 Mass. 564, 47 Am. St. Rep. 485, 40 N. E. 1044	1276, 1278
Jones v. Pease, 21 Wis. 644	1349
Jones v. Perkins, 76 Fed. 82	46, 50
Jones v. Perry, 10 Yerg. 59, 30 Am. Dec. 430.....	1226, 1239
Jones v. Pugh, 8 Ves. 71	192
Jones v. Reed, 3 Wash. 57, 27 Pac. 1067	580
Jones v. Robbins, 29 Me. 351, 1 Am. Rep. 593	1341
Jones v. Rose, 96 Md. 483, 54 Atl. 69	1325
Jones v. Schall, 45 Mich. 379, 4 N. W. 68	118, 142
Jones v. Schlapback, 81 Fed. 274	329, 331, 333, 383
Jones v. Smith, 22 Mich. 360	1234
Jones v. Stewart (Tenn. Ch.), 61 S. W. 105	347
Jones v. Thomas, 2 Smale & G. 186	65
Jones v. Van Doren, 130 U. S. 684, 9 Sup. Ct. 685, 32 L. ed. 1077.....	1169
Jones v. Williams, 139 Mo. 1, 61 Am. St. Rep. 436, 39 S. W. 486, 40 S. W. 353, 37 L. R. A. 682	521, 1276
Jones v. Zollicoffer, 9 N. C. 623, 11 Am. Dec. 795	1404
Jones Bros. Hardware Co. v. Erb, 54 Ark. 645, 17 S. W. 7, 13 L. R. A. 353	626
Jope v. Morshead, 6 Beav. 213	1181, 1199
Jorammon v. McPhee, 31 Colo. 40, 76 Pac. 922	426

Jordan v. Beal , 51 Ga. 602	203
Jordan v. Dobson , 2 Abb. U. S. 398, 4 Fish. Pat. Cas. 232, Fed. Cas. No. 7519	978
Jordan v. Fry , 98 Cal. 264, 33 Pac. 95	1247
Jordan v. Jordan , 121 Ala. 419, 25 South. 855.....	277
Jordan v. McNulty , 14 Colo. 280, 23 Pac. 460	1207
Jordan v. Wells , 3 Woods, 527, Fed. Cas. No. 7525.....	345
Jordeson v. Sutton etc. Co. , [1898] 2 Ch. D. 614, [1899] 2 Ch. 218, 80 L. T., N. S., 815, 63 J. P. 692.....	926, 936, 940
Joselove v. Bohrman , 119 Ga. 204, 45 S. E. 982	147
Joseph Dry Goods Co. v. Hecht , 120 Fed. 760, 57 C. C. A. 64.....	111, 261
Joshua Stubbs, Limited , In re, [1891] 1 Ch. 187, 475	231
Joy v. Ft. Worth Compress Co. , 24 Tex. Civ. App. 94, 58 S. W. 173. 55	
Joy v. St. Louis , 138 U. S. 1, 11 Sup. Ct. 243, 34 L. ed. 843....	1281
Joyce v. Baron , 67 Ohio St. 264, 65 N. E. 1001.....	728
Joyce v. Dauntz , 55 Ohio St. 538, 45 N. E. 900.....	1500
Joyce v. Joyce , 1 Bush (Ky.), 474	1509
Joyce v. McAvoy , 31 Cal. 273, 89 Am. Dec. 172	1248
Judd v. Fox Lake , 28 Wis. 583.....	750
Jungernan v. Boyee , 19 Cal. 354	803, 814
Junker v. Rush , 136 Ill. 179, 26 N. E. 499, 11 L. R. A. 183....	1509
Justice v. Scott , 4 Ired. Eq. (39 N. C.) 108	1088
Justis v. English , 30 Gratt. 565	1147

K

Kaehler v. Dobberpuhl , 56 Wis. 480, 14 N. W. 644.....	750, 755
Kalbitzer v. Goodhue , 52 W. Va. 435, 44 S. E. 264.....	554
Kallock v. Webb , 113 Ga. 762, 39 S. E. 339	815
Kalmus v. Ballin , 52 N. J. Eq. 290, 46 Am. St. Rep. 520, 28 Atl. 791	1430
Kalschener v. Upton , 6 Dak. Ter. 449, 43 N. W. 816.....	1500
Kalteyer v. Sullivan , 18 Tex. Civ. App. 488, 46 S. W. 288....	931
Kalteyer v. Wipff , 92 Tex. 673, 52 S. W. 63.....	1208
Kamer v. Bryant , 103 Ky. 723, 46 S. W. 14	940
Kanawha G. T. & E. R. Co. v. Glen Jean, L. L. & D. W. R. Co. , 45 W. Va. 119, 30 S. E. 86	766, 767
Kane v. Metropolitan El. R. Co. , 125 N. Y. 164, 26 N. E. 278, 11 L. R. A. 640	777, 781
Kane v. Vanderburgh , 1 Johns. Ch. 11	801, 803, 811
Kankakee v. Trustees etc. Hospital , 66 Ill. App. 112	914
Kansas v. Kansas Pac. Ry. Co. , 18 Kan. 331	767
Kansas & A. V. Ry. Co. v. Fitzhugh , 61 Ark. 341, 54 Am. St. Rep. 211, 33 S. W. 960.....	1106
Kansas & G. S. R. Co. v. Dorrough , 72 Tex. 111, 10 S. W. 711....	383
Kansas City v. Gray , 92 Kan. 198, 61 Pac. 746.....	697
Kansas City v. Hanson , 8 Kan. App. 290, 55 Pac. 513.....	697
Kansas City v. Hobbs , 62 Kan. 866, 62 Pac. 324.....	886
Kansas City v. Smiley , 62 Kan. 718, 64 Pac. 613	698
Kansas City, Ft. S. etc. R. Co. v. King , 120 Fed. 615	660
Kansas City, Ft. S. etc. R. Co. v. Scammon , 45 Kan. 481, 25 Pac. 858	694
Kansas City S. & G. R. Co. v. Davis , 50 La. 1054, 23 South. 946..	701
Kansas City S. R. Co. v. Stevenson , 135 Fed. 553.....	36, 37, 52
Kansas Loan & Tr. Co. v. Electric Ry., L. & P. Co. , 108 Fed. 702. 413	
Kansas Mut. Life Assn. v. Hill , 51 Kan. 636, 33 Pac. 300.....	694

Karasek v. Peier, 22 Wash. 419, 61 Pac. 33, 50 L. R. A. 345.....	901
Karker v. Haverly, 50 Barb. 79	1331
Karn v. Rorer Iron Co., 86 Va. 754, 11 S. E. 431.....	397
Kaspar v. Dawson, 71 Conn. 405, 42 Atl. 78	914
Katz v. Brewington, 71 Md. 79, 20 Atl. 139.....	145
Katz v. Moore, 13 Md. 566.....	1111
Katz v. Walkinshaw, 141 Cal. 116, 99 Am. St. Rep. 35, 70 Pac. 663, 74 Pac. 766, 64 L. R. A. 236.....	971
Kaufman v. Stein, 138 Ind. 49, 46 Am. St. Rep. 368, 37 N. E. 333	794, 870, 871, 895, 931
Kaufman v. Wiener, 169 Ill. 596, 48 N. E. 479, affirming 68 Ill. App. 250.....	836, 837
Kaufman Co. v. McGaughey, 3 Tex. Civ. App. 655, 21 S. W. 261..	586
Kay v. Kirk, 76 Md. 41, 35 Am. St. Rep. 408, 24 Atl. 326....	869, 970
Keady v. White, 168 Ill. 76, 48 N. E. 314.....	1361
Kean v. Asch, 27 N. J. Eq. 57.....	946
Kean v. Colt, 5 N. J. Eq. 365.....	110, 115
Kean v. Johnson, 9 N. J. Eq. 401, 409.....	541
Kean v. Union Water Co., 52 N. J. Eq. 813, 46 Am. St. Rep. 538, 31 Atl. 282, reversing 52 N. J. Eq. 111, 27 Atl. 1015....	550, 551
Kcane v. Kyne, 66 Mo. 216.....	1226, 1233
Kearney v. Smith, 11 Tenn. 127, 24 Am. Dec. 550.....	1112
Kearns v. Howley, 188 Pa. St. 116, 68 Am. St. Rep. 852, 41 Atl. 273, 42 L. R. A. 235.....	559
Keates v. Lyon, L. R. 4 Ch. App. 218.....	505
Keator v. Dalton, 29 Misc. Rep. 692, 62 N. Y. Supp. 878.....	620
Kee v. Davis, 137 Cal. 456, 70 Pac. 294.....	1139, 1149
Keeble v. Poole, 105 L. T. 474, 42 Sol. Jour. 791.....	962
Keely v. East Side Imp. Co., 16 Colo. App. 365, 65 Pac. 456....	1113
Keelyn v. Carolina etc. Tel. Co., 90 Fed. 29.....	416
Keen v. Breckenridge, 96 Ind. 69.....	330, 334
Keen v. Weyerross, 101 Ga. 588, 29 S. E. 42.....	613
Keenan v. Handley, 2 De Gex, J. & S. 283.....	1267
Keene v. Kimball, 16 Gray, 545, 77 Am. Dec. 426.....	988
Keene v. Wheatley, 9 Am. Law Reg. 33, Fed. Cas. No. 7644....	987
Keeney v. Carillo, 2 N. Mex. 480.....	971
Keeney v. Home Ins. Co., 71 N. Y. 396, 27 Am. Rep. 60....	286, 384
Keep v. Miller, 42 N. J. Eq. 100, 107, 6 Atl. 495.....	1375
Keese v. Denver, 10 Colo. 113, 15 Pac. 825.....	647, 672
Keeseville v. Keeseville etc. Co., 59 App. Div. 381, 69 N. Y. Supp. 249.....	920
Kehler v. G. W. Jack Mfg. Co., 55 Ga. 639	198
Keighler v. Savage Mfg. Co., 12 Md. 383, 71 Am. Dec. 600.....	1094
Keightly v. Walls, 27 Ind. 384, 386.....	1416
Keiser v. Lovett, 85 Ind. 240, 44 Am. Rep. 10.....	889
Keister v. Cubine, 101 Va. 768, 45 S. E. 285.....	138, 203, 1159
Keister v. Myers, 115 Ind. 312, 17 N. E. 161.....	1141
Keith v. Alger (Tenn.), 85 S. W. 71.....	1082
Keith v. Hudson, 74 Ind. 333.....	1494
Keith v. Johnson, 22 Ky. Law Rep. 947, 59 S. W. 487.....	626
Keith v. National Tel. Co., [1894] 2 Ch. 147.....	1279
Keith v. Trapier, Bail Eq. 63.....	1168
Kelk v. Pearson, L. R. 6 Ch. App. 809, 812.....	944
Kellar v. Bullington, 101 Ala. 267, 14 South. 466.....	825
Kellar v. Williams, 10 Bush (Ky.), 216.....	1476
Keller v. Fenske (Wis.), 101 N. W. 378.....	1498
Keller v. Lewis, 53 Cal. 113.....	1382, 1393

Kellet v. Clayton , 99 Cal. 210, 33 Pac. 885.....	535
Kelley v. Barton , 174 Mass. 396, 54 N. E. 860.....	703
Kelley v. Boettcher , 85 Fed. 55, 62, 29 C. C. A. 14, 21, 56 U. S. App. 363, 383.....	35, 36, 37, 53
Kelley v. Boettcher , 89 Fed. 125.....	110, 112
Kelley v. Kelley , 41 N. H. 502.....	1196
Kelley v. Kriess , 68 Cal. 211, 9 Pac. 122.....	1094
Kelley v. U. P. R. Co. , 58 Kan. 161, 48 Pac. 843.....	380
Kelley v. Whitnev 45 Wis. 110, 30 Am. Rep. 697.....	1404
Kelley v. York Cliffs Co. , 94 Me. 374, 47 Atl. 898.....	1314
Kelley v. Ypsilanti etc. Co. , 44 Fed. 19, 10 L. R. A. 680.....	1057
Kellogg v. Ely , 15 Ohio St. 64.....	729
Kellogg v. King , 114 Cal. 378, 55 Am. St. Rep. 74, 46 Pac. 166.....	822, 829, 836
Kelly v. Alabama etc. R. R. , 58 Ala. 489.....	248
Kelly v. Clark , 21 Mont. 291, 69 Am. St. Rep. 668, 53 Pac. 959, 42 L. R. A. 621.....	1460, 1461, 1466
Kelly v. Deegan , 111 Ala. 152, 20 South. 378.....	1217
Kelly v. East Side Imp. Co. , 16 Colo. App. 365, 65 Pac. 456.....	1121
Kelly v. Herb , 157 Pa. St. 41, 27 Atl. 559.....	1424
Kelly v. Herrick , 131 Mass. 373.....	1494
Kelly v. Lehigh Min. & Mfg. Co. , 98 Va. 405, 81 Am. St. Rep. 736, 36 S. E. 511.....	1265
Kelly v. Martin , 107 Ala. 479, 18 South. 132.....	1227
Kelly v. Mayor of Baltimore , 53 Md. 134.....	606, 613
Kelly v. Minneapolis , 57 Minn. 294, 47 Am. St. Rep. 605, 59 N. W. 304, 26 L. R. A. 92.....	708
Kelly v. Muir , 17 Ky. Law Rep. 167, 30 S. W. 653.....	1184
Kelly v. Short (Tex. Civ. App.), 75 S. W. 877.....	1287
Kelly v. Steele (Idaho), 72 Pac. 887.....	154
Kelly v. Trustees etc. , 58 Ala. 489.....	251
Kelly Dry Goods Co., In re , 102 Fed. 747.....	256
Kelsey's Appeal , 113 Pa. St. 119, 57 Am. Rep. 444, 5 Atl. 447.....	1211
Kemble v. Kean , 6 Sim. 333.....	518
Kemble v. Kemble , 44 N. J. Eq. 454, 11 Atl. 733.....	1188
Kemp v. Bird , L. R. 5 Ch. D. 974.....	515
Kemp v. Nickerson , 66 Fed. 682.....	50
Kemp v. Tucker , L. R. 8 Ch. 369.....	1075
Kempner v. Ivory , 29 S. W. 538.....	1134
Kempson v. Kempson , 58 N. J. Eq. 94, 43 Atl. 97, 61 N. J. Eq. 303, 48 Atl. 244.....	1126
Kenan v. Holloway , 16 Ala. 53, 50 Am. Dec. 162.....	1478, 1502
Kendall, Ex parte , 17 Ves. 514, 520.....	1398, 1402
Kendall v. Frey , 74 Wis. 26, 17 Am. St. Rep. 118, 42 N. W. 466.....	607, 1278
Kendall v. McClure Coke Co. , 182 Pa. St. 1, 61 Am. St. Rep. 688, 37 Atl. 823.....	32, 1126
Kendall v. Smith , 67 Kan. 90, 72 Pac. 543.....	1120
Kendig v. Landis , 135 Pa. St. 612, 19 Atl. 1058.....	1399
Kennedy v. Elliott , 85 Fed. 832.....	822, 1229
Kennedy v. Kennedy , 3 Dana, 239.....	1526
Kennedy v. Montgomery , 98 Tenn. 165, 38 S. W. 1075.....	740
Kennedy v. Northrup , 15 Ill. 149.....	1226, 1228, 1233
Kennedy v. St. Paul & P. R. Co. , 2 Dill. 448, Fed. Cas. No. 7706..	252
Kennedy v. St. Paul & P. R. Co. , 5 Dill. 519, Fed. Cas. No. 7707..	398
Kennedy v. Scovill , 12 Conn. 327.....	1209
Kennedy v. Trott , 6 Moore P. C. C. 449, 467.....	1176

Kennedy v. Wexham, Madd. & G. 355.....	1262, 1263
Kennerty v. Etiwan Phosphate Co., 17 S. C. 411, 43 Am. Rep. 607	879, 883
Kenney v. Consumers' etc. Co., 142 Mass. 417, 8 N. E. 138.....	927
Kenney v. Ranney, 96 Mich. 617, 55 N. W. 982.....	344
Kenney v. Wexham, 6 Madd. 355.....	1267, 1392
Kennington v. Houghton, 2 Younge & C. Ch. 620, 627.....	1517, 1518
Kent v. Quicksilver Min. Co., 78 N. Y. 159.....	550, 554
Kentucky Distilleries & W. Co. v. Warwick Co., 109 Fed. 280, 48 C. C. A. 368.....	1334, 1335
Kentucky Racing & Breeding Assn. v. Galbreath, 25 Ky. Law Rep. 1212, 77 S. W. 371.....	227
Keokuk v. Love, 31 Iowa, 119.	1507, 1511
Keokuk N. L. P. Co. v. Davidson, 13 Mo. App. 561.....	360
Keplinger v. Woolsey (Neb.), 93 N. W. 1008.....	934, 939, 940
Keppel v. Lehigh etc. Co., 9 Pa. Dist. Rep. 219.....	920
Keppell v. Bayley, 2 Mylne & K. 517.....	507
Kerchner v. Fairley, 80 N. C. 24.....	167
Kerchner v. Frazier, 106 Ga. 437, 32 S. E. 351.....	1146
Kerley v. Clay, 4 Bibb, 241.....	1183, 1185
Kerlin v. West, 4 N. J. Eq. 449.....	779, 803, 837
Kern v. Field, 68 Minn. 317, 64 Am. St. Rep. 479, 71 N. W. 393..	858
Kern v. Isgrigg, 132 Ind. 4, 31 N. E. 455.....	764
Kern v. Strausberger, 71 Ill. 413.....	1076, 1077, 1078
Kernaghan v. Williams, L. R. 6 Eq. 228.....	542
Kernoehan v. New York El. R. Co., 128 N. Y. 568, 29 N. E. 65	777, 780
Kerr v. Camden Steamboat Co., Cheves Eq. 189.....	1521
Kerr v. Corsicana (Tex. Civ. App.), 35 S. W. 694.....	742
Kerr v. Purdy, 50 Barb. 24.....	1231
Kerr v. Riddle (Tex. Civ. App.), 31 S. W. 328.....	588
Kerr v. Trego, 47 Pa. St. 292.....	592
Kerr v. Union Bank, 18 Md. 396.....	80, 97
Kesner v. Miesch, 90 Ill. App. 437.....	837
Kessler v. Leets, 7 Ohio Civ. Rep. 108.....	902
Kester v. Stark, 19 Ill. 329.....	1202
Ketcham v. Brazil Block Coal Co., 88 Ind. 515.....	90
Ketchum v. Depew, 81 Hun, 278, 30 N. Y. Supp. 794.....	838
Ketchum v. Walsworth, 5 Wis. 95, 68 Am. Dec. 49.....	1189
Ketter v. Thompson, 13 Bush (Ky.), 287.....	1477
Kettle River R. Co. v. Eastern R. Co., 41 Minn. 461, 43 N. W. 469, 6 L. R. A. 111.....	507
Ke-tuc-e-mun-guah v. McClure, 122 Ind. 541, 23 N. E. 1080, 7 L. R. A. 782.....	1137
Keuffel & Esser Co. v. H. S. Crocker Co., 118 Fed. 187.....	994
Kewanee v. Otley, 204 Ill. 402, 68 N. E. 388.....	965
Key City Gas Light Co. v. Munsell, 19 Iowa, 305.....	1238
Keyes v. Eureka Consol. Min. Co., 158 U. S. 150, 15 Sup. Ct. 772, 39 L. ed. 929.....	979, 981
Keyes v. Ketrick (R. I.), 56 Atl. 770.....	1233
Keyser v. Rice, 47 Md. 203, 28 Am. Rep. 448.....	1126
Kibbe v. Benson, 84 U. S. (17 Wall.) 624, 21 L. ed. 741.....	1116
Kidd v. Dennison, 6 Barb. 10.....	804
Kidd v. Horry, 28 Fed. 773.....	798, 1056, 1057
Kidder v. Houston (N. J. Eq.), 47 Atl. 336.....	57
Kilbourne v. St. John, 59 N. Y. 21, 17 Am. Rep. 291.....	618
Kilbreath v. Gaylord, 34 Ohio St. 305.....	1459

Kildare v. Eustace, 1 Vern. 421.....	1182
Kile v. Goodrum, 87 Ill. App. 462.....	72
Kilgore v. Hair, 19 S. C. 486.....	279
Kilgore v. Norman, 119 Fed. 1006.....	859
Kilham v. Western Bank & S. D. Co., 30 Colo. 365, 70 Pac. 409.....	1420
Kill v. Murdock, 4 Ohio N. P. 244.....	151
Killen v. Barnes, 106 Wis. 546, 82 N. W. 536.....	1459
Killian v. Ebbinghaus, 110 U. S. 568, 4 Sup. Ct. 232, 28 L. ed. 246.....	94, 98
Kilmer v. Smith, 77 N. Y. 226, 33 Am. Rep. 613.....	1142
Kilpatrick v. Peshine, 24 N. J. Eq. (9 C. E. Green) 206....	507, 511
Kilpatrick v. Smith, 77 Va. 347.....	590
Kimball v. Gafford, 78 Iowa, 65, 42 N. W. 583, 4 L. R. A. 398...	303
Kimball v. Goodburn, 32 Mich. 11.....	208
Kimball v. Merchants' S. etc. Co., 89 Ill. 611.....	679
Kimball v. Tooke, 70 Ill. 553.....	1331, 1332
Kimball v. Williams, 65 N. Y. Supp. 69, 51 App. Div. 616.....	1483
Kimberley v. Hewitt, 75 Wis. 371, 44 N. W. 303.....	891, 969
Kimberley v. Jennings, 6 Sim. 340.....	518, 521
Kimble v. Cummins, 3 Met. (Ky.) 327.....	1479
Kime v. Cass County (Neb.), 99 N. W. 546.....	765
Kincaid v. Indianapolis N. G. Co., 124 Ind. 577, 19 Am. St. Rep. 113, 24 N. E. 1066, 8 L. R. A. 602.....	788
Kinder v. Jones, 17 Ves. 110.....	826
King v. Baldwin, 2 Johns. Ch. 554, 17 Johns. 384, 8 Am. Dec. 415.....	1490
King v. Bardeau, 6 Johns. Ch. 38, 10 Am. Dec. 312.....	1364, 1365
King v. Barnes, 51 Hun, 550, 4 N. Y. Supp. 247, affirmed 113 N. Y. 655, 21 N. E. 184.....	245
King v. Barnes, 109 N. Y. 267, 16 N. E. 332.....	1522
King v. Bill, 28 Conn. 593.....	17, 18
King v. Brigham, 23 Or. 262, 31 Pac. 601, 18 L. R. A. 361.....	1173, 1174
King v. Campbell, 85 Fed. 814.....	826, 843
King v. Carpenter, 37 Mich. 363.....	1228, 1232, 1233, 1242, 1247
King v. Clark, 3 Paige, 76.....	1087
King v. Cochran, 72 Vt. 107, 47 Atl. 394.....	441
King v. Cutts, 24 Wis. 627.....	357
King v. Dickeson L. R. 40 Ch. D. 596.....	505
King v. Dupine, 2 Atk. 603, note.....	1415
King v. Goodwin, 130 Ill. 102, 17 Am. St. Rep. 277, 22 N. E. 533.....	289, 1449, 1452
King v. Higgins, 3 Or. 406.....	1251
King v. Howard, 27 Mo. 21.....	1195
King v. King, 6 Ves. 172.....	139
King v. Marissal, 3 Atk. 192.....	1415
King v. Mullins, 27 Mont. 364, 71 Pac. 155.....	824
King v. Rabb, 123 Iowa, 632, 99 N. W. 306.....	1319
King v. Rossett, 2 Younge & J. 33.....	1520
King v. Ruckman, 24 N. J. Eq. 316, 351.....	1335, 1338
King v. Smith, 2 Hare, 239, 243.....	816
King v. Stuart, 84 Fed. 546.....	826
King v. Wartelle, 14 La. Ann. 740.....	1532
King v. White, 63 Vt. 158, 25 Am. St. Rep. 752, 21 Atl. 535....	1538
King v. Wilson, 6 Beav. 124, 126.....	1336, 1339, 1340
King v. Wooten, 2 U. S. App. 651, 54 Fed. 612, 4 C. C. A. 519....	321
Kingsbury v. Buckner, 70 Ill. 514.....	1213
Kingsbury v. Flowers, 65 Ala. 479, 39 Am. Rep. 14....	883, 889, 912
Kingsley v. Bowman, 33 App. Div. 1, 53 N. Y. Supp. 426.....	620

Kinhead v. Ryan, 64 N. J. Eq. 454, 53 Atl. 1053.....	61, 1498
Kinley Mfg. Co. v. Kochersperger, 174 Ill. 379, 51 N. E. 648.....	683
Kinnmouth v. Walling (N. J.), 36 Atl. 891.....	1430
Kinnan v. Sullivan County Club, 26 App. Div. 213, 50 N. Y. Supp. 95.....	549
Kinne v. Webb, 54 Fed. 34, 4 C. C. A. 170, 12 U. S. App. 137, affirming 49 Fed. 512.....	34, 35, 36, 47
Kinnear v. Beatty, 65 Ohio St. 264, 87 Am. St. Rep. 600, 62 N. E. 341.....	786
Kinner v. Lake Shore & M. S. R. Co., 69 Ohio St. 339, 69 N. E. 614.....	1063, 1064
Kinney v. Crocker, 18 Wis. 74.....	336
Kinney v. Hynds, 7 Wyo. 22, 49 Pac. 403, 52 Pac. 1081.....	101
Kinney v. Murray, 170 Mo. 674, 71 S. W. 197.....	1261
Kinsman v. Spokane, 20 Wash. 118, 72 Am. St. Rep. 74, 54 Pac. 934.....	1239, 1240, 1249
Kip v. New York & H. R. Co., 6 Hun (N. Y.), 24.....	768
Kipper v. Glancy, 2 Blackf. 356.....	1429
Kirby v. Bruns, 45 Mo. 234, 100 Am. Dec. 376.....	1420
Kirby v. Lake Shore etc. R. Co., 120 U. S. 137, 7 Sup. Ct. 430, 30 L. ed. 571.....	39
Kirby v. Pascault, 53 Md. 531.....	1078
Kirby v. School Board, [1896] Ch. 437.....	505
Kirk v. Bromley Union, 2 Phill. Ch. 640.....	1257
Kirk v. Du Bois, 28 Fed. 460.....	979
Kirk v. Duren, 45 S. C. 597, 23 S. E. 954.....	1236
Kirk v. United States, 124 Fed. 325.....	1131
Kirkhuff v. Kerr, 57 N. J. Eq. 623, 42 Atl. 734.....	1091, 1123
Kirkland v. Hotchkiss, 100 U. S. 497, 25 L. ed. 558.....	653
Kirklin v. Atlas S. & L. Assn. (Tenn. Ch. App.), 60 S. W. 149..	30
Kirkman v. Handy, 30 Tenn. (11 Humph.) 406, 54 Am. Dec. 45.....	889
Kirkman v. Vanlier, 7 Ala. 217.....	1518
Kirkpatrick v. Buford, 21 Ark. 268, 76 Am. Dec. 363.....	493
Kirkpatrick v. Corning, 38 N. J. Eq. 234.....	384
Kirkpatrick v. Eastern Milling & Export Co., 135 Fed. 151....	348
Kirkpatrick v. McDonald, 11 Pa. St. 387.....	1037
Kirkpatrick v. McElroy, 41 N. J. Eq. 539, 7 Atl. 647.....	384
Kirkpatrick v. Pettis (Iowa), 103 N. W. 956.....	1289
Kirksey v. Fike, 27 Ala. 383, 62 Am. Dec. 768.....	1271
Kirkwood v. Finegan, 95 Mich. 543, 55 N. W. 457.....	901
Kirkwood v. Mitchell, 1 Del. Ch. 130.....	1520
Kirwan v. Murphy, 83 Fed. 275, 28 C. C. A. 348.....	576
Kirwan v. Murphy, 189 U. S. 35, 23 Sup. Ct. 599, 47 L. ed. 698...	584
Kisling v. Barrett (Ind. App.), 71 N. E. 507.....	1527
Kistler v. Weaver, 135 N. C. 388, 47 S. E. 478.....	821
Kittanning Ins. Co., Petition of, 146 Pa. St. 102, 23 Atl. 336..	208
Kittel v. Augusta, T. & G. R. Co., 65 Fed. 859.....	1432, 1435
Kittinger v. Buffalo Traction Co., 25 App. Div. 329, 49 N. Y. Supp. 329.....	620
Kittle v. Bellegarde, 86 Cal. 556, 25 Pac. 55....	1240, 1249, 1253, 1254
Kittle v. Hall, 29 Fed. 508.....	981
Kittle v. Pfeiffer, 22 Cal. 485.....	937, 940
Kittles v. Williams, 64 S. C. 229, 41 S. E. 975.....	1226
Kittridge v. Osgood, 161 Mass. 384.....	290
Kitts v. Austin, 83 Cal. 172, 23 Pac. 290.....	1254
Kitzman v. Minnesota Thresher Mfg. Co., 10 N. D. 26, 84 N. W. 585.....	1123, 1124

Klabunde v. Byron-Reed Co. (Neb.), 98 N. W. 182.....	1096
Klee v. E. H. Steele Co., 60 Minn. 355, 62 N. W. 399.....	227, 241
Kleiman v. Geiselman, 114 Mo. 437, 35 Am. St. Rep. 761, 21 S. W. 796.....	1500
Klein v. W. A. Gavenesch Co., 64 N. J. Eq. 50, 53 Atl. 196.....	391
Kleinhouse, In re, 113 Fed. 107.....	305
Kletchka, In re, 92 Fed. 901.....	1076
Kley v. Healy, 127 N. Y. 555, 28 N. E. 593.....	1164
Klie v. Von Broeck, 56 N. J. Eq. 18, 37 Atl. 469.....	814
Kline v. Vogel, 90 Mo. 239, 1 S. W. 733, 2 S. W. 408.....	38
Klyce v. Brayles, 37 Miss. 524.....	1332
Knapp v. Charles Mix County, 7 S. D. 399, 64 N. W. 187.....	739
Knapp v. Hall, 63 Hun, 624, 17 N. Y. Supp. 437.....	505
Knapp v. King County, 17 Wash. 567, 50 Pac. 480.....	745
Knapp v. St. Louis Transfer Ry. Co., 126 Mo. 26, 28 S. W. 627..	775
Knappen v. Freeman, 47 Minn. 491, 50 N. W. 533.....	1165
Knatchbull v. Grueber, 1 Madd. 167.....	1364, 1366
Kneeland v. Bass Foundry & Mach. Works, 140 U. S. 592, 11 Sup. Ct. 857, 35 L. ed. 543.....	419
Knickerbocker v. Benes, 195 Ill. 434, 63 N. E. 174.....	411
Knight, In re, 8 N. B. R. 436, 2 Biss. 518, Fed. Cas. No. 7880..	1537
Knight v. Alexander, 38 Minn. 384, 8 Am. St. Rep. 675, 38 N. W. 796.....	1247
Knight v. Alexander, 42 Or. 521, 71 Pac. 657.....	1289
Knight v. Duplessis, 1 Ves. 324.....	164
Knight v. Flatrock & W. Turnpike Co., 45 Ind. 134.....	686
Knight v. Hughes, 3 Car. & P. 467.....	1489
Knight v. Nash, 22 Minn. 452.....	195, 1422, 1423
Knight v. Simmonds, [1896] 2 Ch. 294.....	509
Knighton v. Curry, 62 Ala. 404.....	1507
Knollys v. Alcock, 5 Ves. 649.....	1260, 1380
Knopf v. First Nat. Bank, 173 Ill. 331, 50 N. E. 660... 648, 678, 681	
Knott v. Evening Post Co., 124 Fed. 342.....	324, 325, 326
Knott v. Stephens, 5 Or. 235, 241.....	1337
Knott v. Taylor, 99 N. C. 511, 6 Am. St. Rep. 547, 6 S. E. 788..	1075
Knotts v. Tarver, 8 Ala. 743.....	1520
Knower v. Central Nat. Bank, 124 N. Y. 552, 21 Am. St. Rep. 700, 27 N. E. 247.....	1453
Knox v. Gye, L. R. 5 H. L. 656.....	1531, 1532
Knox v. Mayor etc. of New York, 55 Barb. 404.....	877
Knox v. Metropolitan El. R. Co., 36 N. Y. St. Rep. 2, 12 N. Y. Supp. 848.....	777
Knox Co. v. Harshman, 133 U. S. 152, 10 Sup. Ct. 257, 33 L. ed. 586.....	1075
Knudson v. Benn (1903), 123 Fed. 636.....	1027
Knudson v. Litchfield, 87 Iowa, 111, 54 N. W. 199.....	27
Knutson v. Bostrak, 99 Wis. 469, 75 N. W. 156.....	1159, 1160, 1161
Koch v. National Union B. & L. Assn., 137 Ill. 497, 27 N. E. 530..	1350
Kochersperger v. Larned, 172 Ill. 86, 49 N. E. 988....	676, 683, 684
Kochman v. O'Neill, 202 Ill. 110, 66 N. E. 1047.....	1113
Kock v. Triche, 52 La. 825, 27 South. 354.....	701
Koebel v. Chicago Landlord's Protective Bureau, 210 Ill. 176, 102 Am. St. Rep. 154, 71 N. E. 362.....	993, 996, 998
Koechl v. Leibinger & Oehm Brew. Co., 50 N. Y. Supp. 568, 26 App. Div. 573.....	1408
Koeler v. New York El. R. Co., 159 N. Y. 218, 53 N. E. 1114....	781
Koen v. Brill, 75 Miss. 870, 65 Am. St. Rep. 633, 23 South. 481..	1403
Koenig v. Dohm, 209 Ill. 468, 70 N. E. 1061.....	1364

Koenig v. New York Life Ins. Co., 14 N. Y. St. R. 250, 14 Civ. Proc. R. 269.....	74
Koenig v. Watertown, 104 Wis. 409, 80 N. W. 728.....	936, 941
Kofka v. Rosicky, 41 Neb. 328, 43 Am. St. Rep. 685, 59 N. W. 788, 25 L. R. A. 207.....	1358
Kokomo etc. Ry. Co. v. Pittsburg etc. Ry. Co., 25 Ind. App. 335, 58 N. E. 211.....	378
Kolb v. National Surety Co. et al., 176 N. Y. 233, 68 N. E. 247.....	1495
Kontjohn v. Seimers, 29 Mo. App. 271.....	83
Koopman v. Blodgett, 70 Mich. 610, 14 Am. St. Rep. 527, 38 N. W. 649.....	873, 970
Koppinger v. O'Donnell, 16 R. I. 417, 16 Atl. 714.....	98, 99
Kopplein v. Kopplein, 8 Tex. Civ. App. 625, 28 S. W. 220.....	1271
Kornder v. Kings Co. El. R. Co., 41 App. Div. 357, 58 N. Y. Supp. 518.....	782
Kountze v. Cargill, 86 Tex. 386, 25 S. W. 13.....	1414
Kountze v. Omaha Hotel Co., 107 U. S. 378, 2 Sup. Ct. 911, 27 L. ed. 609.....	167, 230
Kraft v. Welch, 112 Iowa, 695, 84 N. W. 908.....	513
Kramer v. Old, 119 N. C. 1, 25 S. E. 813, 56 Am. St. Rep. 650, 34 L. R. A. 389.....	524, 525
Krauss v. Jos. R. Peebles' Sons Co., 58 Fed. 585.....	1000
Kredo v. Phelps, 145 Cal. 526, 78 Pac. 1044.....	821
Krehl v. Burrell, L. R. 7 Ch. D. 551, affirmed in L. R. 11 Ch. D. 146.....	952, 960
Kreling v. Kreling, 118 Cal. 421, 50 Pac. 549.....	259
Krieschel v. Board of Snohomish County Commissioners, 12 Wash. 428, 41 Pac. 186.....	628
Kreiser v. New York, 46 App. Div. 16, 61 N. Y. Supp. 329.....	68
Kreislee v. Campbell, 89 Tex. 104, 33 S. W. 853.....	308
Kring v. Green's Exrs., 10 Mo. 195.....	94
Krohn v. Weinberger, 47 W. Va. 127, 34 S. E. 746.....	107
Kron v. Dennis, 90 N. C. 327.....	158
Krouse v. Woodward, 110 Cal. 638, 42 Pac. 1084.....	1269
Kruschke v. Stefan, 83 Wis. 373, 53 N. W. 679.....	1189
Kruse v. Koelzer (Wis.), 102 N. W. 1072.....	1139
Kudrna v. Ainsworth, 65 Neb. 711, 91 N. W. 711.....	1424, 1428
Kuenzel v. Mayor etc. of Baltimore, 93 Md. 750, 49 Atl. 649....	703
Kuhl v. Pierce County, 44 Neb. 584, 62 N. W. 1066.....	1521
Kuhn v. Freeman, 15 Kan. 423.....	1389
Kuns v. Robertson, 154 Ill. 394, 40 N. E. 343.....	563
Kurtz v. Hibner, 55 Ill. 514, 8 Am. St. Rep. 665.....	1211, 1212
Kurtz v. Phila. etc. R. R. Co., 187 Pa. St. 59, 40 Atl. 988.....	325
Kusch v. Kusch, 143 Ill. 353, 32 N. E. 267.....	1158
Kuser v. Wright, 52 N. J. Eq. 825, 31 Atl. 397.....	366
Kuzniak v. Kosminski, 107 Mich. 444, 61 Am. St. Rep. 344, 65 N. W. 275.....	901
Kyes v. St. Croix Co., 108 Wis. 136, 83 N. W. 637.....	625
Kyle v. Mary Lee Coal & R. Co., 112 Ala. 606, 20 South. 851....	77, 85, 95
Kyle v. Rhodes, 71 Miss. 487, 15 South. 40.....	803, 846
Kyle v. Richardson (Tex. Civ. App.), 71 S. W. 399.....	1123
Kyner v. Kyner, 6 Watts (Pa.), 221.....	1506

L

Labadie v. Hewett, 85 Ill. 341.....	1183
Labenelle v. Deconet, 2 La. Ann. 645.....	1488

Labouchere v. Earl of Wharncliffe, 13 Ch. D. 346.....	554
Lacey, Ex parte, 6 Ves. 625.....	1300
La Chapelle v. Bubb, 69 Fed. 481.....	574, 576
Lackawanna Iron & Coal Co. v. Farmers' Loan & Tr. Co., 79 Fed. 202, 24 C. C. A. 487 (affirmed, 176 U. S. 298, 20 Sup. Ct. 363, 44 L. ed. 475).....	413, 421, 422
Lackmann v. Supreme Council (1904), 142 Cal. 22.....	446
La Chaire v. Lord, 10 How. Pr. 461.....	200
Lacy v. Gard, 60 Ill. App. 72.....	1210
Ladd v. Boston, 21 Am. St. Rep. 489, note.....	503
Ladd v. Flynn, 90 Mich. 181, 51 N. W. 203.....	901, 1068
Ladd v. Granite State Brick Co., 68 N. H. 185, 37 Atl. 1041..	881
Ladd v. Judson, 174 Ill. 344, 66 Am. St. Rep. 267, 51 N. E. 838.....	1425
Ladd v. Osborne, 79 Iowa, 93, 44 N. W. 235.....	832
Ladd v. Smith, 107 Ala. 506, 18 South. 195.....	1421
Ladd v. Spencer, 23 Or. 193, 31 Pac. 474.....	736
Lady Arundell v. Phipps, 10 Ves. 139.....	1264
Lafever v. Billmyer, 5 W. Va. 33.....	1518
Lahman v. Hatch, 124 Cal. 1, 56 Pac. 621.....	668
Lahr v. New York etc. Railroad Co., 104 N. Y. 268, 10 N. E. 528.....	777
Laing v. Zeden, L. R. 9 Ch. 736.....	97
Laird v. Pine County, 72 Minn. 409, 75 N. W. 723.....	707
Laird v. Vila (Minn.), 100 N. W. 656.....	1259
Lake v. Brutton, 8 De Gex, M. & G. 440.....	1507
Lake v. Jarret, 12 Ind. 395.....	1190, 1214
Lake Erie & W. R. Co. v. Essington, 27 Ind. App. 291, 60 N. E. 457	913, 955
Lake Erie & W. R. Co. v. Fremont, 92 Fed. 721.....	889
Lake Erie & W. R. Co. v. Young, 135 Ind. 426, 41 Am. St. Rep. 430, 35 N. E. 177.....	872, 890, 893
Lake Shore & M. S. Ry. Co. v. Elyria, 69 Ohio, 414, 69 N. E. 738.....	872
Lake Shore M. S. R. Co. v. Felton, 103 Fed. 227, 43 C. C. A. 189..	305, 307, 833
Lake Shore M. S. R. Co. v. Wiley, 193 Pa. St. 496, 44 Atl. 583..	859
Lamaster v. Elliott, 53 Neb. 424, 73 N. W. 925.....	151
Lamb v. Cain, 129 Ind. 486, 29 N. E. 13, 14 L. R. A. 518....	563
Lamb v. Rowan, 83 Miss. 45, 35 South. 427, 690.....	1527
Lambert v. Alcorn, 144 Ill. 313, 331, 33 N. E. 53, 21 L. R. A. 611.....	888
Lambert v. Huber, 22 Misc. Rep. 462, 50 N. Y. Supp. 793.....	882
Lamberton v. Mellish, [1894] L. R. 3 Ch. Div. 163.....	925
Lamb Knit Goods Co. v. Lamb Glove & Mitten Co., 120 Mich. 159, 78 N. W. 1072, 44 L. R. A. 841.....	998
Lamborn v. Covington Co., 2 Md. Ch. 409.....	872
Lamkin v. Baldwin etc. Co., 72 Conn. 59, 43 Atl. 593, 44 L. R. A. 786.....	322
Lamon v. McKee, 18 D. C. (7 Mackey) 440, 479.....	66
Lamprey v. Lamprey, 29 Minn. 156, 12 N. W. 514.....	1286
Lamprey v. St. Paul etc. Ry. Co., 89 Minn. 187, 94 N. W. 555, 557.....	1291
Lamprey v. Whitehead, 64 N. J. Eq. 408, 54 Atl. 803....	1321, 1324
Lanahan v. Caffrey, 57 N. Y. Supp. 724, 40 App. Div. 124.....	1435
Lanahan v. John Kissel & Son, 135 Fed. 899.....	994
Lanauze v. Railway Co., 3 Irish Eq. 454.....	184

Lancaster v. Asheville St. Ry. Co., 90 Fed. 129, 133..	109, 110, 115
Lancaster v. Seay, 6 Rich. Eq. 111.....	1202
Lancaster v. Wolff, 23 Ky. Law Rep. 233, 62 S. W. 717.....	1205
Lance v. Tainter (N. C.), 49 S. E. 211.....	1226
Land v. Smith, 44 La. Ann. 931, 11 South. 577.....	1190
Landell v. Hamilton, 175 Pa. St. 327, 34 Atl. 663, 34 L. R. A. 227.....	508, 509
Landes's Estate Co. v. Clallam County, 19 Wash. 569, 53 Pac. 670.....	745, 746
Landis v. Saxton, 105 Mo. 486, 24 Am. St. Rep. 406, 16 S. W. 912	56
Landregan v. Peppin, 94 Cal. 465, 467, 29 Pac. 771..	1248, 1251, 1254
Landry v. Bertrand, 48 La. Ann. 48, 19 South. 126.....	1075
Landon v. Morris (Ark.), 86 S. W. 672.....	1200
Land Title & Trust Co. v. Asphalt Co. of America, 120 Fed. 996	434
Lane v. Anderson, 67 Fed. 563.....	585
Lane v. Capsey, [1891] 3 Ch. 411.....	333, 345
Lane v. Lane (Ky.), 50 S. W. 857.....	1159
Lane v. Macon & A. Ry. Co., 96 Ga. 630, 24 S. E. 157.....	411
Lane v. Metropolitan El. R. Co., 69 App. Div. 231, 74 N. Y. Supp. 595.....	778
Lane v. Michigan Traction Co., 10 Det. Leg. News, 685, 97 N. W. 354.....	859
Lane v. Morrill, 51 N. H. 422.....	606
Lane v. Moss, 64 Hun, 632, 18 N. Y. Supp. 605.....	1110
Lane v. Newdigate, 10 Ves. 192.....	954, 1068
Lane v. New York L. Ins. Co., 56 Hun, 92, 9 N. Y. Supp. 52..	101
Lane v. Union Nat. Bank, 75 Ill. App. 299.....	1449, 1452
Lane v. Washington Hotel Co., 190 Pa. St. 230, 42 Atl. 697....	291
Lane & Bodley Co. v. Locke, 150 U. S. 193, 14 Sup. Ct. 78, 37 L. ed. 1049.....	62, 981
Lang v. Merwin (Me.), 59 Atl. 1021.....	931
Lang v. Waring, 17 Ala. 145.....	1534
Langan v. Francklyn, 29 Abb. N. C. 102, 20 N. Y. Supp. 404..	542
Langdon v. Sherwood, 124 U. S. 74, 8 Sup. Ct. 429, 31 L. ed. 344.....	26
Lange v. La Crosse & E. R. Co., 118 Wis. 558, 95 N. W. 952..	772
Langford v. Pitt, 2 P. Wms. 629.....	1296, 1329
Langmaid v. Reed, 159 Mass. 409, 34 N. E. 593	509
Langston v. Boylston, 2 Ves. 101, 103, 109.....	65, 67, 69, 80, 97
Lang Syne G. M. Co. v. Ross, 20 Nev. 127, 19 Am. St. Rep. 337, 18 Pac. 358.....	1096
Langton v. Horton, 3 Beav. 464.....	71
Lanier v. Alison, 31 Fed. 100.....	843
Lanier v. Padgett, 18 Fla. 842.....	628
Lanigan's Admr. v. Bradley & Currier Co., 50 N. J. Eq. 202, 24 Atl. 505.....	75
Lansdowne v. Lansdowne, 1 Madd. 116.....	815
Lansing v. Easton, 7 Paige, 364.....	1453
Lant v. Manley, 71 Fed. 7, 19.....	54, 62
Lant v. Manley, 75 Fed. 627, 21 C. C. A. 457.....	1441
Lanyon v. Chesney, 186 Mo. 540, 85 S. W. 568.....	1366, 1367
Lapham v. Campbell, 61 Cal. 296.....	1114
Larabrie v. Brown, 26 L. J. Rep., Eq., N. S., 605.....	70
Larcom v. Olin, 160 Mass. 102, 35 N. E. 113.....	579

La Republique Francaise v. Saratoga Vichy Spring Co.,	191
U. S. 427, 24 Sup. Ct. 145, 48 L. ed. 247.....	995
Larkin v. Mann, 2 Paige, 27.....	1210
Larmon v. Jordan, 56 Ill. 204.....	1227
Larned v. Renshaw, 37 Mo. 458.....	1182
Larney v. New York & H. R. Co., 62 App. Div. 311, 71 N. Y. Supp. 27.....	778
Larrowe v. Beam, 10 Ohio, 498.....	1171
Larsen v. Winder, 14 Wash. 109, 53 Am. St. Rep. 864, 44 Pac. 123.....	263, 268, 269
Larson v. Williams, 100 Iowa, 110, 62 Am. St. Rep. 544, 63 N. W. 464, 69 N. W. 441.....	1098
Lasater v. Green, 10 Okla. 335, 62 Pac. 816.....	733
Lasher v. McCreery, 66 Fed. 834.....	40, 46, 52
La Societe Francaise v. District Court, 53 Cal. 495.....	108, 209, 227, 238, 246
La Societe Francaise v. Salheimer, 57 Cal. 623.....	167
Lasor v. Baldridge, 32 Mo. App. 362, 366.....	1320
Latham v. Chaffee, 7 Fed. 525.....	115, 159, 160
Lathrop v. Elsner, 93 Mich. 599, 53 N. W. 791.....	940
Lathropp v. Marsh, 5 Ves. 259.....	811
Latimer v. Aylesbury & B. Ry. Co., L. R. 9 Ch. D. 385.....	198
Latshaw, Appeal of, 122 Pa. St. 142, 9 Am. St. Rep. 76, 15 Atl. 676.....	1192
Lattimer v. Livermore, 72 N. Y. 174.....	503
Lattin v. McCarty, 41 N. Y. 107.....	849
Laughlin v. Fariss, 7 Okla. 1, 50 Pac. 254, 256.....	851
Laune v. Hauser, 58 Neb. 663, 79 N. W. 555.....	173, 181
Laurel Springs Land Co. v. Fougerey, 50 N. J. Eq. 756, 26 Atl. 886.....	212, 214, 216
Lavenson v. Standard Soap Co., 80 Cal. 245, 13 Am. St. Rep. 147, 22 Pac. 184.....	816
Law v. Ford, 2 Paige, 310.....	144, 147
Law v. Smith (N. J. Eq.), 59 Atl. 327.....	41, 1262
Lawrence v. Bank of Republic, 35 N. Y. 320.....	1443
Lawrence v. Conlon, 26 Misc. Rep. 44, 56 N. Y. Supp. 345.....	181
Lawrence v. Killam, 11 Kan. 499.....	694, 696
Lawrence v. Leidigh, 58 Kan. 676, 50 Pac. 889.....	593, 594
Lawrence v. Rokes, 61 Me. 38.....	1533
Lawrence v. Saratoga Lake Ry. Co., 36 Hun, 467.....	1278, 1280
Lawrence v. Watson, 8 Hun, 593.....	101
Lawrence v. Zimpleman, 37 Ark. 643.....	1232
Lawrence Iron-Works Co. v. Rockbridge Co., 47 Fed. 755.....	111, 205
Lawrence Mfg. Co. v. Lowell etc. Mills, 129 Mass. 325, 37 Am. Rep. 362.....	468
Lawrence Mfg. Co. v. Tennessee Mfg. Co., 138 U. S. 537, 11 Sup. Ct. 396, 34 L. ed. 997.....	992
Lawson v. Jordan, 19 Ark. 297, 70 Am. Dec. 596.....	94
Lawson v. Menasha Wooden-Ware Co., 59 Wis. 393, 48 Am. Rep. 528, 18 N. W. 440.....	534
Lawson v. Schnellen, 33 Wis. 288, 294.....	623
Lawson v. Warren, 89 Ala. 584, 8 South. 141.....	1413
Lawton v. Nichols, 12 Okla. 550, 73 Pac. 262.....	1120
Lawton v. Richardson, 115 Mich. 12, 72 N. W. 988.....	202
Laybourn v. Gridley, [1892] 2 Ch. 53.....	914
Layton v. Monroe, 23 South. 99, 50 La. Ann. 121.....	588
Lazarus v. Artistic etc. Co., [1897] L. R. 2 Ch. 214.....	940, 944

Lazarus Jewelry Co. v. Steinhardt, 112 Fed. 614, 50 C. C. A. 393.....	1434
L. B. Price Co. v. City of Atlanta, 105 Ga. 358, 31 S. E. 619..	675
Leach v. Beattie, 33 Vt. 195.....	1213, 1522, 1523
Leach v. Day, 27 Cal. 643.....	828
Leach v. Forney, 21 Iowa, 271, 89 Am. Dec. 574.....	1370
Leach v. Harbough (Neb.), 91 N. W. 521.....	834
Leachman v. Capps, 89 Tex. 690, 36 S. W. 250.....	1130
Leadville Coal Co. v. McCreery, 141 U. S. 475, 12 Sup. Ct. 28, 35 L. ed. 824.....	381
Leaird v. Smith, 44 N. Y. 618.....	1331
Leak v. Morrice, 2 Cas. in Ch. 135.....	1362
Leake & Watts Orphan House v. Lawrence, 11 Paige, 80.....	1537
Learned v. Castle, 78 Cal. 454, 18 Pac. 872, 21 Pac. 11.....	894
Learned v. Hunt, 63 Miss. 373.....	881
Leary v. Colombia etc. Nav. Co., 82 Fed. 775.....	227
Leary v. Corvin (N. Y.), 73 N. E. 984.....	1291
Leathe v. Thomas, 97 Fed. 136, 38 C. C. A. 75.....	1079
Leather Cloth Co. v. American Leather Cloth Co., 4 De Gex, J. & S. 136, 11 H. L. Cas. 523.....	1000
Leavenworth v. Douglass, 59 Kan. 416, 53 Pac. 123.....	922
Leavenworth v. Jones, 69 Kan. 857, 77 Pac. 273.....	697
Leavitt v. Palmer, 3 N. Y. 19, 51 Am. Dec. 333.....	1208
Leavitt v. Stern, 159 Ill. 526, 42 N. E. 869.....	1347
Lebanon v. Ohio & M. Ry. Co., 77 Ill. 539.....	679
Le Clercq v. Trustees of Gallipolis, 7 Ohio, 217, 28 Am. Dec. 641.....	926
Le Comte v. Carson (W. Va.), 49 S. E. 238.....	1142
Lecourt v. Gaster, 49 La. Ann. 487, 21 South. 646.....	1084
Leddell's Exr. v. Starr, 20 N. J. Eq. 274.....	73
Lee v. Abrams, 12 Ill. 111.....	1527
Lee v. Alton, 1 Ves. 78, 82.....	815
Lee v. Kirby, 104 Mass. 420.....	1312
Lee v. Lindell, 22 Mo. 203, 64 Am. Dec. 262.....	1192, 1206
Lee v. Simpson, 37 Fed. 12, 2 L. R. A. 659.....	487
Lee v. Watson, 15 Mont. 228, 38 Pac. 1077.....	846, 851
Lee v. Wrixon (Wash.), 79 Pac. 489.....	1351
Leech v. Schweder, L. R. 9 Ch. App. 463, 476.....	511, 934, 944
Leeds v. Earl of Strafford, 4 Ves. 180.....	1176, 1177
Leeds v. Powell, 1 Ves. Sr. 171.....	1176
Leeds v. Townsend, 74 Ill. App. 444.....	143
Lees v. Wetmore, 58 Iowa, 170, 12 N. W. 238.....	1244
Leesburg v. Putnam, 103 Ga. 110, 68 Am. St. Rep. 80, 29 S. E. 602.....	629
Lefevre v. Laraway, 22 Barb. 173.....	1217
Le Fevre v. Matthews, 39 App. Div. 232, 57 N. Y. Supp. 128..	336
Lefrois v. Monroe County, 24 App. Div. 421, 48 N. Y. Supp. 519.....	877, 924
Leggett v. Sloan, 24 How. Pr. 479.....	273
Leggett v. Standard Oil Co., 149 U. S. 287, 13 Sup. Ct. 902, 37 L. ed. 737.....	61
Leggott v. Barrett, 15 Ch. D. 306.....	526
Le Grand v. Whitehead, 1 Russ. 309.....	1366
Le Herisse v. Hess (N. J. Eq.), 57 Atl. 808.....	1428
Lehigh Coal & Nav. Co. v. Central R. R. Co., 38 N. J. Eq. 175, 179.....	347

Lehigh Coal & Nav. Co. v. Central R. Co., 43 Hun, 546.....	245
Lehigh Coal & Nav. Co. v. Miller, 155 Pa. St. 542, 26 Atl. 660.....	737
Lehigh etc. Co. v. Scranton etc. Co., 6 Pa. Dist. Rep. 291.....	968
Lehman v. Logan, 7 Ired. Eq. 296.....	804
Lehman v. McQuown, 31 Fed. 138.....	350
Lehman v. Meyer, 67 Ala. 403.....	1425, 1444
Lehman v. Tallassee Mfg. Co., 64 Ala. 567.....	167
Leib v. Stribling, 51 Md. 285.....	1401
Leigh v. Armor, 35 Ark. 123.....	1107
Leininger's Appeal, 106 Pa. St. 398.....	842, 843
Lejeune v. Harmon, 29 Neb. 268, 45 N. W. 630.....	1234
Lembeck v. Nye, 47 Ohio St. 336, 21 Am. St. Rep. 828, 24 N. E. 686, 8 L. R. A. 578.....	832
Lemmon v. Guthrie Center, 113 Iowa, 36, 86 Am. St. Rep. 361, 84 Mo. 986.....	828
Lemoine v. Dunklin County, 51 Fed. 487, 2 C. C. A. 343, 10 U. S. App. 227 (affirming 46 Fed. 219).....	46, 47, 56
Lemon v. Sweeny, 6 Ill. App. 507.....	1119
Lenahan v. College of St. Francis Xavier, 51 App. Div. 535, 64 N. Supp. 868.....	1208
Lenfers v. Henke, 73 Ill. 405, 24 Am. Rep. 263.....	1188
Lennon, In re (1896), 166 U. S. 548, 554, 17 Sup. Ct. 658, 41 L. ed. 1110.....	1043
Lennon v. Metropolitan L. I. Co., 20 Misc. Rep. 403, 45 N. Y. Supp. 1033.....	68
Lenoir v. Linville Imp. Co., 117 N. C. 471, 23 S. E. 442.....	436
Lenox, Corporation, In re, 57 App. Div. 515, 68 N. Y. Supp. 103.....	294
Lent v. McQueen, 15 How. Pr. (N. Y.) 313.....	188
Leonard v. Capital Ins. Co., 101 Iowa, 482, 70 N. W. 629.....	1113
Lerch v. City of Duluth, 88 Minn. 295, 92 N. W. 1116.....	637
Leroux v. Hudson, 109 U. S. 468, 3 Sup. Ct. 309, 27 L. ed. 1000.....	1079
Le Roy v. Rogers, 3 Paige, 234.....	1414
Le Roy v. Wright, 4 Saw. 530, Fed. Cas. No. 8273.....	822
Leslie v. Lorillard, 110 N. Y. 519, 18 N. E. 363, 1 L. R. A. 456.....	546
Leslie v. St. Louis, 47 Mo. 474.....	711, 712
Leslie v. Thompson, 9 Hare, 268, 273.....	1304
Lester v. Bemis Lumber Co., 71 Ark. 379, 74 S. W. 518.....	1466
Le Tourney v. Hugo, 90 Minn. 420, 97 N. W. 115.....	627
Letts v. Kessler, 54 Ohio St. 73, 42 N. E. 765, 40 L. R. A. 177, overruling, 7 Ohio Cir. Rep. 108.....	900, 902
Level Land Co. v. Sivyver, 112 Wis. 442, 88 N. W. 317.....	1434
Lever v. Bailey, 56 N. J. L. 54, 27 Atl. 799.....	363
Leverton v. Waters, 7 Cold. 20.....	1201
Levi v. Louisville, 97 Ky. 394, 30 S. W. 973, 28 L. R. A. 480..	699
Levis Zukoski Mercantile Co. v. Bowers, 105 Tenn. 138, 58 S. W. 287.....	1441
Levy v. Ely, 15 How. Pr. 395.....	200
Levy v. Hart, 54 Barb. 248.....	1226, 1235
Levy v. Iroquois Bldg. Co., 80 Md. 300, 30 Atl. 707.....	1324
Levy v. Ladd, 35 Fla. 391, 17 South. 635.....	1229
Levy v. Metropolis Mfg. Co., 73 Conn. 559, 48 Atl. 429.....	1112
Levy v. Rosenstein, 666 N. Y. Supp. 101; affirmed in 56 App. Div. 618, 67 N. Y. Supp. 630.....	918
Levy v. Shreveport, 27 La. Ann. 620.....	634

Lewis, In re, 52 Kan. 660, 35 Pac. 287.....	213, 217, 303, 304
Lewis v. American Naval Stores Co., 119 Fed. 391, 397.....	438, 451
Lewis v. Bateman, 26 Utah, 434, 73 Pac. 509.....	630
Lewis v. Bogue Chitto, 76 Miss. 356, 24 South. 875.....	710
Lewis v. Boskins, 27 Ark. 61.....	1394
Lewis v. Chamberlain, 108 Cal. 525, 41 Pac. 413.....	1408
Lewis v. Christian, 40 Ga. 187.....	811, 1209
Lewis v. Clark, 129 Fed. 570, 64 C. C. A. 138.....	440
Lewis v. Denver City Waterworks Co., 19 Colo. 236, 41 Am. St. Rep. 248, 34 Pac. 993.....	602, 605
Lewis v. Gollner, 129 N. Y. 227, 26 Am. St. Rep. 516, 29 N. E. 81.....	512
Lewis v. Laidley, 39 W. Va. 422, 19 S. E. 378.....	1446
Lewis v. Lechmere, 10 Mod. 503.....	1262
Lewis v. North Kingstown, 16 R. I. 15, 27 Am. St. Rep. 724, 11 Atl. 173.....	828, 859
Lewis v. Palmer, 28 N. Y. 71.....	1494
Lewis v. Pennsylvania R. Co. (N. J. Eq.), 33 Atl. 932.....	771
Lewis v. Sellick (Tex.), 7 S. W. 673.....	1212
Lewis v. Smith, 1 Macn. & G. 417.....	488
Lewis v. Soule, 52 Iowa, 11, 2 N. W. 400.....	1244
Lewis v. Symmes, 61 Ohio St. 471, 76 Am. St. Rep. 428, 56 N. E. 194.....	728, 729
Lewis v. Tobias, 10 Cal. 574.....	1154, 1155
Lewis & Fowler Mfg. Co., In re, 89 Hun, 208, 34 N. Y. Supp. 983.....	297
Lewisohn v. Anaconda Copper Min. Co., 26 Misc. Rep. 613, 56 N. Y. Supp. 807.....	546, 548
Lewiston Water & Power Co. v. Asotin County, 24 Wash. 371, 64 Pac. 544.....	744, 746
Lexington & O. R. R. Co. v. Applegate, 8 Dana (Ky.), 289, 33 Am. Dec. 497.....	769
Ley v. Huber, 3 Watts, 367.....	1330
Leyland v. Illingworth, 2 De Gex, F. & J. 248.....	1365
L'Hote v. Boyet (Miss.), 38 South. 1.....	415
Liberty Bell, The, 23 Fed. 843.....	600
Lichtenstein v. Dial, 68 Miss. 54, 8 South. 272.....	427, 429
Lick v. Ray, 43 Cal. 83.....	1226
Liebermann v. City of Milwaukee, 89 Wis. 336, 61 N. W. 1112..	757
Life Ins. Co. v. Bigler, 79 N. Y. 568.....	816
Liggett & M. Tobacco Co. v. Reid Tobacco Co., 104 Mo. 53, 24 Am. St. Rep. 313, 15 S. W. 843.....	990
Light etc. Co. v. Jackson, 73 Miss. 598, 19 South. 771.....	1157
Liles v. Rogers, 113 N. C. 197, 37 Am. St. Rep. 627, 18 S. E. 104.....	1499, 1503
Lillywhite v Trimmer, 36 L. J. Ch. 525.....	908
Lime City Bldg., Loan & Sav. Assn. v. Black, 136 Ind. 544, 35 N. E. 829.....	239
Lincoln v. Rutland etc. R. R., 24 Vt. 639.....	65, 80
Lindell Real Estate Co. v. Lindell, 133 Mo. 386, 33 S. W. 466..	1441
Lindell Real Estate Co. v. Lindell, 142 Mo. 61, 43 S. W. 368..	41, 57, 58
Linden v. Case, 46 Cal. 171.....	601
Linden Land Co. v. Milwaukee Electric Ry. & Lighting Co., 107 Wis. 493, 83 N. W. 851.....	607, 611, 616
Lindenthal v. Germania Life Ins. Co., 174 N. Y. 76, 66 N. E. 629.....	1270

Lindley v. O'Reilly, 50 N. J. L. 636, 7 Am. St. Rep. 802, 15 Atl. 379, 1 L. R. A. 79.....	25, 29
Lindsay v. Allen (Tenn.), 82 S. W. 171.....	613, 628
Lindsay v. American Mtg. Co., 97 Ala. 412, 11 South. 770....	113, 167, 169
Lindsay v. Barron, 60 E. C. L. 291....	84
Lindsay Petroleum Co. v. Hurd, L. R. 5 P. C. 221.....	42
Lindsey v. Brewer, 60 Vt. 627.....	1182
Lindsley v. Sparks, 20 Tex. Civ. App. 56, 48 S. W. 204.....	1111
Line v. Carlisle Mfg. Co., 5 Pa. Dist. R. 642.....	213
Linehan Ry. & Transfer Co. v. Pendergrass, 70 Fed. 1, 16 C. C. A. 585.....	657
Lingwood v. Stowmarket Co., L. R. 1 Eq. 77, 336.....	915
Lining v. Geddes, 1 McCord Ch. (S. C.) 304, 16 Am. Dec. 606..	954
Link Belt Machinery Co. v. Hughes, 174 Ill. 155, 51 N. E. 179.....	392
Link Belt Machinery Co. v. Hughes, 195 Ill. 413, 63 N. E. 186 (affirming 95 Ill. App. 323).....	428
Links v. Connecticut River Bkg. Co., 66 Conn. 277, 33 Atl. 1003.	330
Linnell v. Battey, 17 R. I. 241, 21 Atl. 606.....	1238, 1239
Linton v. Lucy Cobb Institute, 117 Ga. 678, 45 S. E. 53.....	675
Linville v. Hadden, 88 Md. 594, 41 Atl. 1097, 43 L. R. A. 222..	443
Linwood Park Co. v. Van Dusen, 63 Ohio St. 183, 58 N. E. 576..	513
Linzee v. Mixer, 101 Mass. 512.....	504
Lionberger v. Pelton, 62 Neb. 252, 86 N. W. 1067.....	767
Lippincott v. Barton, 42 N. J. Eq. 272, 10 Atl. 884.....	814
Lippincott v. Leslie, 44 N. J. Eq. 120, 14 Atl. 103.....	870
Lippincott v. Wikoff, 54 N. J. Eq. 107, 33 Atl. 305, 308....	1321, 1323
Liquidating Commissioners etc. v. Marrero, 106 La. 130, 30 South. 305.....	701
List v. Wheeling, 7 W. Va. 501....	601, 622
Lister v. Lister, 3 Younge & C. Ch. 544.....	1214
Litichenstein v. Dial, 68 Miss. 54, 8 South. 272.....	426
Litchfield v. Brooklyn, 13 Misc. Rep. 693, 34 N. Y. Supp. 1090..	723
Litchfield v. Browne, 70 Fed. 141, 36 U. S. App. 130, 17 C. C. A. 28.....	1160, 1161
Litchfield v. Richards, 9 Wall. 577, 19 L. ed. 681.....	584
Little v. Gallus, 38 N. Y. Supp. 487, dissenting opinion, Id. 1014, 4 App. Div. 569....	490
Little v. Garabrant, 90 Hun, 404, 35 N. Y. Supp. 689.....	366
Little v. Gould, 2 Blatchf. 165, Fed. Cas. No. 8394.....	986
Little v. Ragan, 83 Ky. 321.....	1430, 1431
Little Falls Elect. & Water Co. v. Little Falls, 102 Fed. 663....	636
Littlejohn v. Leffingwell, 40 App. Div. 13, 57 N. Y. Supp. 839..	811
Littler v. Jayne, 124 Ill. 123, 16 N. E. 374.....	626
Little Rock v. Barton, 33 Ark. 436.....	666
Little Rock v. Prather, 46 Ark. 471.....	666
Little Rock & F. S. R. R. Co. v. Wells, 61 Ark. 354, 54 Am. St. Rep. 216, 33 S. W. 208.....	1100, 1106, 1117
Little Rock & H. S. W. R. R. Co. v. Newman (Ark.), 84 S. W. 727.	1119
Littleton v. Fritz, 65 Iowa, 488, 54 Am. Rep. 19, 22 N. W. 641	795, 897
Little Warrior Coal Co. v. Hooper, 105 Ala. 665, 17 South. 118	223, 225
Litzenberg v. Jarvis-Conklin Trust Co., 8 Utah, 15, 28 Pac. 871	417

Liverpool & London & Globe Ins. Co. v. Clunie, 88 Fed. 160...	576
Liverpool etc. Assn. v. Smith, 37 Ch. D. 170.....	1058
Livingston v. Clarkson, 4 Edw. Ch. 597.....	1214
Livingston v. Ketcham, 1 Barb. 597.....	1188
Livingston v. Peru Iron Co., 2 Paige, 390, 391.....	1306
Livingston v. Swofford Bros. Dry Goods Co., 12 Colo. App. 320, 56 Pac. 351.....	188, 1429
Livingstone v. Bank of Montreal, 50 Ill. App. 562.....	67
Lloyd, In re, L. R. Ch. Div. 447.....	277, 279
Lloyd v. Collett, 4 Bro. C. C. 469.....	1337, 1338
Lloyd v. Loaring, 6 Ves. 773.....	492, 1264, 1265
Lloyd v. Lloyd, 61 Iowa, 243, 16 N. W. 117.....	1217
Lloyd v. London etc. R. Co., 2 De Gex, J. & S. 568.....	510, 944
Lloyd v. Passingham, 16 Ves. 68.....	153
Loaiza v. Superior Court, 85 Cal. 11, 20 Am. St. Rep. 197, 9 L. R. A. 376, 24 Pac. 707.....	203
Lochenmeyer v. Fogarty, 112 Ill. 572.....	1494
Lock v. Slusher, 102 Ky. 415, 43 S. W. 471.....	1136
Lockett v. Hurt, 57 Ala. 198.....	1226
Locke v. Klunker, 123 Cal. 231, 55 Pac. 993.....	182
Lockhart v. Leeds, 10 N. Mex. 568, 63 Pac. 48.....	850
Lockwood v. Faber, 27 Fed. 63.....	983
Lockwood, v. Lawrence, 77 Me. 297, 52 Am. Rep. 763..	875, 876, 966
Lockwood v. Lockwood, 124 Mich. 627, 83 N. W. 613.....	1159
Lockwood v. Mitchell, 19 Ohio, 448, 53 Am. Dec. 438.....	1097
Lockwood v. St. Louis, 24 Mo. 20.....	711, 1228
Lockwood v. Wabash R. R. Co., 122 Mo. 86, 43 Am. St. Rep. 547, 26 S. W. 698.....	775
Lockwood v. White, 65 Vt. 466, 26 Atl. 639.....	46
Lodor v. McGovern, 48 N. J. Eq. 275, 27 Am. St. Rep. 44, 22 Atl. 199.....	720
Loeber v. Butte General Elec. Co., 16 Mont. 1, 50 Am. St. Rep. 468, 39 Pac. 912.....	782
Lofsky v. Manjer, 3 Sandf. Ch. (N. Y.) 69.....	181
Loftus v. Cotes, 1 T. B. Mon. (Ky.) 97.....	1251
Logan v. Bull, 78 Ky. 607.....	1294, 1295
Logan v. Dixon, 73 Wis. 533, 41 N. W. 713.....	1532
Logan v. Driscoll, 19 Cal. 623, 81 Am. Dec. 90.....	873
Logan v. Logan, 22 Fla. 561, 1 Am. St. Rep. 212.....	1432
Logan v. Slade, 28 Fla. 699, 10 South. 25.....	186
Logan v. Weinholt, 7 Bligh, 57.....	1260
Logansport v. Case, 124 Ind. 254, 24 N. E. 88.....	689
Logansport v. La Rose, 99 Ind. 117.....	687
Logansport v. McConnell, 121 Ind. 419, 23 N. E. 264.....	689
Loggie v. Chandler, 95 Me. 220, 49 Atl. 1059.....	1228
London v. London, 1 Humph. 1.....	1171
London v. Nash, [1747] 3 Atk. 512.....	1276
London v. Warfield, 5 J. J. Marsh. (Ky.) 196.....	806
London v. Wilmington, 78 N. C. 109.....	725
London & S. F. Bank, Ltd., v. Dexter Horton & Co., 126 Fed. 593.....	40
London etc. Co. v. Evans, [1892] L. R. 2 Ch. D. 432.....	941
London etc. Ry. v. Lancashire etc. Co., L. R. 4 Eq. 174.....	835
London etc. Ry. v. Gomm, L. R. 8 Q. B. Div. 562.....	500
Lone Tree Ditch Co. v. Rapid City etc. Co. (S. D.), 93 N. W. 650.....	970
Long v. Casebeer, 28 Kan. 226.....	846

Long v. Cochran , 9 Phila. 267.....	1520
Long v. Eisenbeis , 18 Wash. 423, 51 Pac. 1061.....	1109
Long v. Gilbert (Tenn. Ch. App.), 59 S. W. 414.....	1101
Long v. Harvey , 177 Pa. St. 473, 55 Am. St. Rep. 733, 35 Atl. 869, 34 L. R. A. 169.....	562
Long v. Mulford , 17 Ohio St. 484, 93 Am. Dec. 638.....	1204
Long v. Ragan , 94 Md. 462, 51 Atl. 181.....	852
Long v. Richardson , 26 Tex. Civ. App. 197, 62 S. W. 964....	140
Long v. Superior Court , 127 Cal. 686, 60 Pac. 464.....	98
Longley v. Hudson , 4 T. & C. 353.....	1228
Longshore Printing Co. v. Howell , 26 Or. 527, 46 Am. St. Rep. 640, 38 Pac. 547, 28 L. R. A. 464....793, 1033, 1036, 1039, 1040	
Longstaff v. Hurd , 66 Conn. 350, 34 Atl. 91.....	269
Longwell v. Bentley , 23 Pa. St. 99.....	1201, 1381
Longwood etc. Co. v. Baker , 27 N. J. Eq. 166.....	960, 1069
Longworth v. Sedevic , 165 Mo. 221, 65 S. W. 260.....	931
Lonsdale Co. v. Woonsocket , 21 R. I. 498, 44 Atl. 929.....	50
Lonsdale Co. v. Woonsocket , 25 R. I. 428, 56 Atl. 448....	920, 970
Loog v. Bean , 26 Ch. D. 306.....	798, 1058
Loomis v. Riley , 24 Ill. 310.....	1205
Loomis v. Roberts , 57 Mich. 284, 23 N. W. 816.....	1232
Loomis v. Rosenthal , 34 Or. 585, 57 Pac. 55.....	44, 48, 52
Loos, In re , 50 Hun. 67, 3 N. Y. Supp. 383.....	309, 317
Lopez v. Campbell , 18 App. Div. 427, 46 N. Y. Supp. 91.....	1447
Lorch v. Aultman , 75 Ind. 162.....	401
Lord v. Carbon Iron Mfg. Co. , 38 N. J. Eq. 452, 459.....	919, 1068
Lord v. Horr , 30 Wash. 477, 71 Pac. 23.....	1139
Lord v. Hull , 178 N. Y. 9, 102 Am. St. Rep. 484, 70 N. E. 69..	1528, 1529
Lord v. Langdon , 91 Me. 221, 39 Atl. 552.....	901
Lord v. Staples , 23 N. H. 448.....	1478
Lord v. Underdunk , 1 Sandf. Ch. 46.....	1348, 1350
Lord v. Whitehead , 24 Fed. 801.....	978
Lord Auckland v. Westminster Board , L. R. 7 Ch. 597.....	607
Lord Battersea v. Commissioners etc. London , [1895] L. R. 2 Ch. D. 708.....	959
Lord Brook v. Lord Hertford , 2 P. Wms. 519.....	1196, 1203
Lord Brooke v. Roundthwaite , 5 Hare, 298.....	1365
Lord Cranstown v. Johnston , 3 Ves. 170.....	450
Lord Pengall v. Ross , 2 Eq. Abr. 46.....	1354
Lord Percival v. Phipps , 2 Ves. & B. 19, 24.....	989
Lord Petre v. The Eastern Counties Ry. Co. , 1 Railway Cases, 462, 479.....	1320
Lord Portarlington v. Soulby , 3 Mylne & K. 104.....	1125
Lord Ranelagh v. Melton , 2 Drew. & S. 278.....	1328
Lord Tredegar v. Windus , L. R. 19 Eq. 607.....	1086
Lorenz v. Waldron , 96 Cal. 243, 31 Pac. 54.....	837
Lorimer v. Lorimer , 5 Madd. 363.....	1213
Loring v. Bacon , 3 Cush. (Mass.) 465.....	1477
Loring v. Hildreth , 170 Mass. 328, 64 Am. St. Rep. 301, 49 N. E. 652.....	1226
Los Angeles v. Ballerino , 99 Cal. 597, 32 Pac. 581, 34 Pac. 329..	668
Los Angeles v. Los Angeles City Water Co. , 137 Cal. 699, 70 Pac. 770.....	408
Los Angeles v. Los Angeles City Water Co. , 124 Cal. 368, 57 Pac. 210.....	835

Los Angeles & Bakersfield O. & D. Co. v. Occidental Oil Co., 144 Cal. 528, 78 Pac. 25.....	1294
Los Angeles City Water Co. v. Los Angeles, 88 Fed. 720, 748..	636
Los Angeles City Water Co. v. Los Angeles, 103 Fed. 711, 716	636, 637
Los Angeles Terminal Land Co. v. Muir, 136 Cal. 36, 68 Pac. 308 ..	502
Los Angeles University v. Swarth, 107 Fed. 798, 46 C. C. A. 647, 54 L. R. A. 262..	502
Lothrop v. Marble, 12 S. D. 511, 76 Am. St. Rep. 626, 81 N. W. 885.....	1358
Loud v. City of Charlestown, 99 Mass. 208.....	703
Loughren v. B. F. Bonniwell & Co. (Iowa), 101 N. W. 287....	1092
Louisiana v. Jumel, 107 U. S. 711, 2 Sup. Ct. 128, 27 L. ed. 448..	582
Louisiana v. Lagarde, 60 Fed. 186.....	1085
Louisiana Board of Liquidation v. McComb, 92 U. S. 531, 23 L. ed. 623.....	574
Louisiana State Lottery Co. v. Clark, 16 Fed. 20, 4 Woods, 169	65, 98
Louisiana Savings Bank, Matter of, 35 La. Ann. 196.....	204
Louisiana State Lottery Co. v. Fitzpatrick, 3 Woods, 222, Fed. Cas. No. 8541.....	1085
Louis Snyder's Sons v. Armstrong, 37 Fed. 18.....	371
Louisville v. Gray, 1 Litt. 146.....	1227
Louisville & N. R. Co. v. Bitterman, 128 Fed. 176.....	1063
Louisville & N. R. Co. v. Brown, 123 Fed. 946.....	586
Louisville & N. R. Co. v. Central Trust Co., 87 Fed. 500, 31 C. C. A. 89.....	423
Louisville & N. R. Co. v. Com., 97 Ky. 675, 31 S. W. 476..	539, 540
Louisville & N. R. Co. v. Eakins, 100 Ky. 745, 39 S. W. 416....	250
Louisville & N. R. Co. v. Gibson, 43 Fla. 315, 31 South. 230....	826
Louisville & N. R. Co. v. Pittsburg & K. Coal Co., 111 Ky. 960, 98 Am. St. Rep. 447, 64 S. W. 969.....	1062
Louisville & T. Turnpike Co. v. Boss, 19 Ky. Law Rep. 1954, 44 S. W. 981.....	545
Louisville Bagging Mfg. Co. v. Central Pass. Ry. Co., 95 Ky. 50, 44 Am. St. Rep. 203, 23 S. W. 592.....	770
Louisville E. & St. L. R. Co. v. Wilson, 138 U. S. 501, 11 Sup. Ct. 405, 34 L. ed. 1023.....	418
Louisville, N. A. & C. R. Co. v. Beck, 119 Ind. 124, 21 N. E. 471.	787
Louisville N. A. & C. R. Co. v. Ohio Val. I. & C. Co., 57 Fed. 42, 45.....	1156
Louisville Southern Ry. Co. v. Tucker's Admr., 105 Ky. 492, 49 S. W. 214.....	338
Louisville Trust Co. v. Cincinnati, 76 Fed. 296, 22 C. C. A. 334.	329
Louisville Trust Co. v. Stone, 107 Fed. 305, 46 C. C. A. 299..	645, 653, 659
Louisville Water Co. v. Hamilton, 81 Ky. 517.....	700
Lounsbery v. Lcsander, 25 N. J. Eq. 554, 559.....	1376
Love v. Blauw, 61 Kan. 496, 78 Am. St. Rep. 334, 59 Pac. 1059, 48 L. R. A. 257.....	1185
Love v. Bryson, 57 Ark. 589, 22 S. W. 341.....	1244
Love v. Morrill, 19 Or. 545, 24 Pac. 916.....	1173, 1174
Lovejoy v. Potter, 60 Mich. 95, 26 N. W. 844.....	1384
Lovelady v. Burgess, 32 Or. 418, 52 Pac. 25.....	1248
Loveenthal v. Home Ins. Co., 112 Ala. 108, 57 Am. St. Rep. 17, 20 South. 419, 33 L. R. A. 258.....	1374, 1375

Loveridge v. Shurtz, 111 Mich. 618, 70 N. W. 132.....	1261
Lovett v. Slocumb, 109 N. C. 110, 13 S. E. 893.....	157
Low v. Holmes, 17 N. J. Eq. 148.....	153, 1202, 1205, 1209
Low v. Innes, 4 De Gex, J. & S. 286.....	1069
Low v. Low, 173 Mass. 580, 54 N. E. 257....	1353
Low v. Staples, 2 Nev. 209.....	1234
Lowe v. Burke, 79 Ga. 164, 3 S. E. 449.....	1213
Lowell v. Doe, 44 Minn. 144, 46 N. W. 297.....	172, 181
Lowell Inst. for Sav. v. City of Lowell, 153 Mass. 530, 27 N. E. 518.....	505
Lowell Mfg. Co. v. Hartford Carpet Co., 2 Fish. Pat. Cas. 472, Fed. Cas. No. 8569.....	980
Lowenbein v. Fuldner, 2 Misc. Rep. 176, 21 N. Y. Supp. 615...	529
Lowenberg v. Jefferies, 74 Fed. 385.....	288, 290
Lowenthal v. New Music Hall Co., 100 Ill. App. 274.....	850
Lowery v. Pekin, 186 Ill. 387, 57 N. E. 1062, 51 L. R. A. 301..	764, 939
Lowery v. Peterson, 75 Ala. 109..	1386
Lowman v. Crawford, 99 Va. 688, 40 S. E. 17.....	1159
Lowndes v. Bettle, 3 New Rep. 409, 33 L. J. Ch. 451, 10 Jur., N. S., 226.....	826, 838, 842
Lowndes v. Cornford, 18 Ves. 299...	70
Lownsedale v. Gray's Harbor, 117 Fed. 983.....	840
Lowther v. Lowther, 13 Ves. 95.....	1264, 1312
Lowther Oil Co. v. Miller-Sibley Oil Co., 53 W. Va. 501, 97 Am. St. Rep. 1027, 44 S. E. 433..	1333, 1336
Loy v. Madison etc. Gas Co., 156 Ind. 332, 58 N. E. 844.....	532
Loyd v. Blackburn (W. Va.), 50 S. E. 740.....	834
Lozier's Exrs. v. Van Saun's Admrs., 3 N. J. Eq. 325..	70, 76, 80, 94
Lubricating Oil Co. v. Standard Oil Co. (1886), 42 Hun (N. Y.), 153.....	1011
Lucas v. Comerford, [1790] 1 Ves. Jr. 235, 3 Bro. C. C. 166....	1276
Lucas v. King, 2 Stockt. Ch. (10 N. J. Eq.) 280.....	1200
Lucas v. Scott, 41 Ohio St. 636, 641.....	1368, 1369
Luck v. Luck, 113 Pa. St. 256, 6 Atl. 142.....	1212
Lucke v. Clothing Cutters' Union, 77 Md. 396, 39 Am. St. Rep. 421, 26 Atl. 505, 19 L. R. A. 408.....	1013
Lockett v. Williamson, 37 Mo. 388.....	1295
Luco v. Brown, 73 Cal. 3, 2 Am. St. Rep. 772, 14 Pac. 366.....	1124
Ludington v. Patton, 111 Wis. 208, 86 N. W. 571.....	37, 41
Ludington v. Thompson, 153 N. Y. 499, 47 N. E. 903.....	345
Ludlow & C. Coal Co. v. City of Ludlow, 102 Ky. 354, 43 S. W. 435.....	633
Ludwig v. Lazarus, 41 N. Y. Supp. 773, 10 App. Div. 62.....	1124
Luke v. Sheridan, 26 Ind. App. 529, 60 N. E. 359.....	687
Luker v. Dennis, L. R. 7 Ch. D. 227.....	515
Lumley v. Gye, 2 El. & B. 216.....	1009
Lumley v. Wagner, 1 De Gex, M. & G. 604...498, 518, 520, 1299, 1300	
Lumpkin v. Mills, 4 Ga. 343.....	1502
Lumpkin v. Williams, 1 Tex. Civ. App. 214, 21 S. W. 967.....	1099
Lumsden, Ex parte, 41 S. C. 553, 19 S. E. 749.....	588
Lumsden v. Fraser, 12 Sim. 263.....	1378
Lund v. Seamen's Bank, 37 Barb. 129.....	88
Lundbom v. City of Manistee, 93 Mich. 170, 53 N. W. 161.....	707
Lundy v. Seymour, 55 N. J. Eq. 1, 35 Atl. 893.....	41
Lunsford v. Jarrett, 11 Lea, 192.....	1382

Lunsford v. Lunsford, 122 Ala. 242, 25 South. 171.....	164
Luse v. Deitz, 46 Iowa, 205.....	1296, 1329
Lushington v. Boldero, 15 Beav. 1.....	815
Lusting v. Conn, 1 Ir. Ch. 273.....	811
Lutey v. Clark (Mont.), 77 Pac. 305.....	402
Lutjen v. Lutjen (N. J. Eq.), 53 Atl. 625.....	45
Lutman v. Lake Shore & M. S. Ry. Co., 56 Ohio St. 433, 47 N. E. 248	729
Luton v. Badham, 127 N. C. 96, 80 Am. St. Rep. 783, 37 S. E. 143, 53 L. R. A. 337.....	1354
Lutt v. Grimont, 17 Ill. App. 308.....	188
Lux v. Haggin, 69 Cal. 256, 10 Pac. 674.....	873, 884
Lycoming Ins. Co. v. Wright, 55 Vt. 526.....	439
Lyday v. Douple, 17 Md. 188.....	1076
Lyle v. Little, 83 Hun, 532, 33 N. Y. Supp. 8.....	858
Lyles v. Kirkpatrick, 9 S. C. 265.....	1296
Lyman v. Central Vermont R. Co., 59 Vt. 167, 10 Atl. 346....	335, 336, 411
Lyman v. Lyman, 2 Paine C. C. 11, Fed. Cas. No. 8628.....	1534
Lynch v. Eastern Ry. Co., 57 Wis. 430, 15 N. W. 743, 825....	600, 622
Lynch v. Egan (Neb.), 93 N. W. 775.....	832
Lynch v. Lynch, 18 Neb. 586, 26 N. W. 390.....	1201
Lynch v. Metropolitan El. R. Co., 129 N. Y. 274, 26 Am. St. Rep. 523, 29 N. E. 315, 15 L. R. A. 287.....	779
Lynch v. Union Inst. for Savings, 158 Mass. 394, 33 N. E. 603	516, 855
Lynch v. Union Institution for Savings, 159 Mass. 306, 34 N. E. 364, 20 L. R. A. 842.....	855
Lynchburg & R. St. Ry. Co. v. Dameron, 95 Va. 545, 28 S. E. 951	611, 623
Lynde v. Columbus C. & I. Ry. Co., 57 Fed. 993.....	29
Lynn, Appeal of, 31 Pa. St. 44, 72 Am. Dec. 721.....	804
Lynn v. Gephart, 27 Md. 547.....	1381
Lyon v. Bolling, 9 Ala. 463, 44 Am. Dec. 444	1442
Lyon v. Gombert, 63 Neb. 630, 88 N. W. 774.....	1244
Lyon v. Hunt, 11 Ala. 295, 46 Am. Dec. 216.....	838, 846, 1226
Lyon v. Lyon, 102 Ga. 453, 66 Am. St. Rep. 189, 31 S. E. 34, 42 L. R. A. 194.....	494
Lyon v. McLaughlin, 32 Vt. 423.....	876
Lyon v. Powell, 78 Ala. 351.....	1215
Lyon v. Register, 36 Fla. 273, 18 South. 589.....	1203
Lyon v. Tonawanda, 98 Fed. 361.....	664
Lyon v. Wilkins, [1896] 1 Ch. D. 811.....	1025, 1038
Lysaght v. Edwards, L. R. 2 Ch. D. 499... 1373, 1374, 1376, 1377, 1379	
Lythgoe v. Smith, 140 N. Y. 442, 35 N. E. 646.....	1217
Lytle v. James, 98 Mo. App. 337, 73 S. W. 287.....	835
Lytle v. Sandefeer, 93 Ala. 396, 9 South. 260.....	1238
Lytton v. Great Northern Ry. Co., 2 Kay & J. 394.....	1278

M

Mabel Mining Co. v. Pearson etc. Co., 121 Ala. 567, 25 South. 754	839
Mabon v. Ongley Electric Co., 156 N. Y. 196, 50 N. E. 805.....	451
Macauley Bros. v. Tierney et al., 19 R. I. 255, 259, 61 Am. St. Rep. 770, 33 Atl. 1, 37 L. R. A. 455.....	1049
Macbeth v. Banfield (Or.), 78 Pac. 693.....	1466

Mace v. Wells , 7 How. (U. S.) 272, 12 L. ed. 698.....	1480
Mack v. De Bardeleben Coal & I. Co. , 90 Ala. 396, 8 South. 150, 9 L. R. A. 650.....	546
Mackall v. Ratchford , 82 Fed. 41.....	1022, 1025, 1026
Mackenzie v. Coulson , L. R. 8 Eq. 368.....	1140
Mackenzie v. Johnston , 4 Madd. 373.....	1521
Mackey-Smith v. Crawford , 56 App. Div. 136, 67 N. Y. Supp. 541.....	925
Macklin v. Allenberg , 100 Mo. 337, 13 S. W. 350.....	17, 18
Mackreth v. Marlar , 1 Cox, 260.....	1338
Maclean v. Fitzsimmons , 80 Mich. 336, 45 N. W. 145.....	1153
Macomber v. Peckham , 16 R. I. 485, 17 Atl. 910.....	1148
Mackwirth, In re , 15 App. Div. 65, 44 N. Y. Supp. 80.....	344
Macomb v. Lake County , 9 S. D. 466, 70 N. W. 652.....	739
Macon v. Hughes , 110 Ga. 795, 36 S. E. 247.....	588, 609
Macy v. Nantucket , 121 Mass. 351.....	75, 703
Maddison v. Alderson , [1883] L. R. 8 App. Cas. (H. of L.) 467	1345, 1349, 1354, 1357
Maddox v. White , 4 Md. 72, 59 Am. Dec. 67.....	513, 803, 808, 818
Madison v. Ducktown S., C. & I. Co. (Tenn.) , 83 S. W. 658.....	875, 907
Madison v. Smith , 83 Ind. 502.....	601, 622
Maffet v. Quine , 93 Fed. 347.....	941
Magee v. Legett , 48 Miss. 139.....	1506
Magee Furnace Co. v. Le Barron , 127 Mass. 115.....	468
Magennis v. Fallon , 2 Molloy, 585, 588.....	1365, 1366, 1371
Magnuson v. Clithero , 101 Wis. 551, 77 N. W. 882.....	1229
Mahan v. Brown , 13 Wend. 261, 28 Am. Dec. 461.....	902
Mahew v. Crickett , 2 Swanst. 185.....	1494
Mahon v. Crothers , 28 N. J. Eq. 567.....	172
Mahon v. New Orleans , 52 La. Ann. 1226, 27 South. 650.....	631
Mahro v. Greenwich Sav. Bank ; 16 Misc. Rep. 275; 38 N. Y. Supp. 126, reversed in 16 Misc. Rep. 537, 40 N. Y. Supp. 29.....	100
Main v. Ginthert , 92 Ind. 180.....	167, 185
Main v. Melbourne , 4 Ves. 720.....	1355
Maisch v. Hoffman , 42 N. J. Eq. 116, 7 Atl. 349.....	1238
Maish v. Arizona , 164 U. S. 599, 17 Sup. Ct. 193, 41 L. ed. 567..	656
Maish v. Bird , 59 Iowa, 307, 13 N. W. 298.....	186, 271
Maitland v. Manhattan R. Co. , 9 Misc. Rep. 616, 30 N. Y. Supp. 428.....	779
Makeel v. Hotchkiss , 190 Ill. 311, 83 Am. St. Rep. 131, 60 N. E. 524.....	1504
Makepeace v. Rogers , 11 Jur., N. S., 215.....	1521
Makins v. Percy , [1891] 1 Ch. 133.....	166
Malin v. Coult , 4 Ind. 535.....	1381
Malins v. Freeman , 2 Keen, 25.....	1304, 1305
Mallett v. Dexter , 1 Curt. 178, Fed. Cas. No. 8988.....	1088
Mallory v. Kirkpatrick , 54 N. J. Eq. 50, 33 Atl. 205.....	1451
Mallory Mfg. Co. v. Hickok , 20 Fed. 116.....	982
Malott v. Shiner , 153 Ind. 35, 74 Am. St. Rep. 278, 54 N. E. 101	330, 341, 411
Mallow v. Walker , 115 Iowa, 238, 91 Am. St. Rep. 158, 88 N. W. 452.....	1429
Malmesbury v. Malmesbury , 31 Beav. 407.....	1149
Mammoth etc. Co.'s Appeal , 54 Pa. St. 183.....	840
Manbeck v. Jones , 190 Pa. St. 171, 42 Atl. 536.....	946
Manby v. Robinson , L. R. 4 Ch. 347.....	97

Manchester Brewing Co. v. Coombs, [1901] 2 Ch. 608.....	515
Manchester Canal Co. v. Manchester Racecourse Co., [1901] 3 Ch. 37.....	497
Manchester Cotton Mills v. Town of Manchester, 25 Gratt. 828..	764
Manchester etc. Banking Co. v. Parkinson, L. R. 22 Q. B. Div. 173.....	119
Manchester Fire Ins. Co. v. Herriott, 91 Fed. 711.....	581
Manchester Locomotive Works v. Truesdale, 44 Minn. 115, 46 N. W. 301, 9 L. R. A. 140.....	416
Manchester Print Works v. Stimson, 2 R. I. 415.....	97
Manchester-Sheffield etc. Co. v. Worksof Board of Health, 23 Beav. 198.....	914
Manchester Ship Canal Co. v. Manchester R. Co., [1901] 2 Ch. 37, affirming [1900] 2 Ch. 352.....	530
Mander v. Falke, [1891] 2 Ch. 554.....	513
Manderson v. Commercial Bank, 28 Pa. St. 379.....	542
Mandeville v. Avery, 124 N. Y. 376, 21 Am. St. Rep. 678, 26 N. E. 951.....	376
Manhattan etc. Co. v. Barker, 7 Rob. (N. Y.) 523.....	917, 918
Manhattan Mfg. etc. Co. v. New Jersey etc. Co., 23 N. J. Eq. 161.	529
Manhattan Medicine Co. v. Wood, 108 U. S. 218, 2 Sup. Ct. 436, 27 L. ed. 706.....	1000
Manhattan Trust Co. v. Sioux City & N. R. Co., 102 Fed. 710..	422
Manikee v. Beard, 85 Ky. 20, 2 S. W. 545.....	1171
Manitowoc Malting Co. v. Milwaukee Malting Co., 119 Wis. 543, 97 N. W. 389.....	994
Manker v. Phoenix Loan Assn. (Iowa), 96 N. W. 982.....	334
Manlove v. Burger, 38 Ind. 211.....	356, 360
Manly Bldg. Co. v. Newton, 114 Ga. 245, 40 S. E. 274.....	626
Manly Mfg. Co. v. Broadbudd, 94 Va. 547, 27 S. E. 438.....	611
Mann v. Appel, 31 Fed. 378.....	1407, 1410
Mann v. Flower, 26 Minn. 479, 5 N. W. 365.....	1082
Mann v. German-American Inv. Co. (Neb.), 97 N. W. 600....	208, 227
Mann v. Willey, 51 App. Div. 169, 64 N. Y. Supp. 589, affirmed in 168 N. Y. 664, 61 N. E. 1131.....	966
Mann v. Utica, 44 How. Pr. 334.....	1225
Manning v. Lacey, 97 Ga. 384, 23 S. E. 845.....	1136
Manning v. Ogden, 70 Hun, 399, 24 N. Y. Supp. 70.....	803, 846
Manning v. Pippen, 86 Ala. 357, 363, 11 Am. St. Rep. 46, 5 South. 572.....	1260
Manning v. Riley, 52 N. J. Eq. 39, 27 Atl. 810.....	1361
Manor Casino v. State (Tex.), 34 S. W. 769.....	796, 896
Mansfield v. Sherman, 81 Me. 365, 17 Atl. 300.....	1303, 1304
Mansfield v. Shipp, 128 Ind. 55, 27 N. E. 427.....	100
Mansfield v. Wilkinson, 16 Ky. Law Rep. 276, 27 S. W. 808....	1427
Mantle v. Speculator Min. Co., 27 Mont. 473, 71 Pac. 665.....	41, 56
Manton v. Ray, 18 R. I. 672, 49 Am. St. Rep. 811, 29 Atl. 998..	1269
Manufacturers etc. Co. v. Indiana etc. Co., 155 Ind. 566, 58 N. E. 851.....	932
Manx v. Bell, 6 Sim. 175.....	97
Mapes v. Scott, 4 Ill. App. 268.....	154
Marble City Land & F. Co. v. Golden, 110 Ala. 376, 17 South. 935.....	1425
Marble Co. v. Ripley, 10 Wall. 339, 358, 19 L. ed. 955..	1294, 1298, 1318
March v. Barnet, 121 Cal. 419, 66 Am. St. Rep. 44, 53 Pac. 933.....	1477, 1495

Marcuse v. Gullett Gin Mfg. Co., 52 La. Ann. 1383, 27 South. 846.....	214
Margraf v. Muir, 57 N. Y. 155.....	1307
Marine Ins. Co. v. Hodgson, 7 Cranch, 332, 3 L. ed. 362....	1075, 1091
Maris v. Masters, 31 Ind. App. 235, 67 N. E. 699.....	1333
Mark v. Stephens, 38 Or. 65, 84 Am. St. Rep. 750, 63 Pac. 824..	1136
Markert v. Jefferson (Ga.), 50 S. E. 398.....	523
Markham v. Angier, 57 Ga. 43.....	1095
Markham v. Howell, 33 Ga. 508.....	826
Marks v. Jaffa, 6 Misc. Rep. 290, 26 N. Y. Supp. 908.....	1060
Marks v. Morris, 2 Munf. (Va.) 407, 5 Am. Dec. 481.....	567
Marks v. Tichenor, 85 Ky. 536, 4 S. W. 225.....	1389
Marks v. Willis, 36 Or. 1, 78 Am. St. Rep. 752, 58 Pac. 526....	1128
Marlin Firearms Co. v. Shields, 171 N. Y. 384, 64 N. E. 163, re- versing 68 App. Div. 88, 74 N. Y. Supp. 84.....	1056
Marlow v. Smith, 2 P. Wms. 198, 201.....	1321
Marquette etc. R. R. v. Marquette, 35 Mich. 504.....	1237
Marquis of Bute v. Glamorganshire Canal Co., 1 Phill. Ch. 681..	1175
Marr v. Lewis, 31 Ark. 203, 25 Am. Rep. 553.....	1400, 1401, 1402
Marr v. Washburn, 167 Mass. 35, 44 N. E. 1062.....	1227
Mars v. Albany Savings Bank, 64 Hun, 429, 19 N. Y. Supp. 791, affirmed 69 Hun, 398, 23 N. Y. Supp. 658.....	68
Marsh v. Bird, 59 Iowa, 207, 13 N. W. 298.....	261
Marsh v. Brooklyn, 59 N. Y. 280.....	1228, 1235, 1236
Marsh v. Burroughs, 1 Wood, 463, Fed. Cas. No. 9112.....	1470
Marsh v. Harrington, 18 Vt. 150.....	1484
Marsh v. Kings Co. El. R. Co., 86 Fed. 189, 29 C. C. A. 655.....	779
Marsh v. Pike, 10 Paige Ch. 595.....	1497
Marsh v. Supervisors of Clark County, 42 Wis. 502.....	749, 750, 751, 752, 754
Marshall v. Board of Managers, 201 Ill. 9, 66 N. E. 314.....	594
Marshall v. Crow's Admr., 29 Ala. 278.....	1183, 1185
Marshall v. Friend, 68 N. Y. Supp. 502, 33 Misc. Rep. 443.....	345
Marshall v. Hall, 42 W. Va. 641, 26 S. E. 300.....	1442
Marshall v. Lockett, 76 Ga. 289.....	305, 306
Marshall v. Marshall, 86 Ala. 383, 5 South. 475.....	1216
Marshall v. Perry, 90 Ill. 289, 294.....	1338, 1339
Marshall v. Ross, L. R. 8 Eq. 651.....	1000
Marshall v. South Staffordshire Tramways Co., [1895] 2 Ch. 36..	231
Marshall v. Thompson, 2 Munf. 412.....	1267
Marshall etc. Bank v. Cady, 76 Minn. 112, 78 N. W. 978....	170, 171
Marshall etc. Bank v. Cady, 75 Minn. 241, 77 N. W. 831.....	181
Marston v. Gould, 69 N. Y. 221.....	1522
Mart, In re The, 22 Abb. N. C. 227, 5 N. Y. Supp. 82.....	209
Marten v. Von Schaick, 4 Paige (N. Y.), 479.....	142, 147
Martin, Ex parte, 13 Ark. (8 Eng.), 198, 58 Am. Dec. 321..	764, 909
Martin v. Atchison, 2 Idaho, 624, 33 Pac. 47.....	334
Martin v. Blanchin, 16 La. Ann. 237.....	261, 269
Martin v. Burgyn, 88 Ga. 78, 13 S. E. 958.....	200
Martin v. Byrd, 19 Ky. Law Rep. 1030, 42 S. W. 1112.....	1436
Martin v. Clay, 8 Okla. 46, 56 Pac. 715.....	731
Martin v. Graves, 5 Allen, 601.....	1154, 1226
Martin v. Headon, L. R. 2 Eq. 425.....	940, 944
Martin v. Heckman, 1 Alaska, 165.....	942
Martin v. Hurley, 84 Mo. App. 670.....	147
Martin v. Kester, 46 W. Va. 438, 33 S. E. 238.....	569

Martin v. Maberry , 1 Dev. Eq. 169.....	83
Martin v. McFall (1903), 65 N. J. Eq. 91, 55 Atl. 465.....	
.....	1013, 1029, 1030
Martin v. Marks , 154 Ind. 549, 57 N. E. 249....	871, 912, 913, 929, 930
Martin v. Martin , 164 Ill. 640, 56 Am. St. Rep. 219, 45 N. E.	
1007.....	1499
Martin v. Martin , 170 Ill. 639, 62 Am. St. Rep. 411, 48 N. E.	
924.....	1193, 1359
Martin v. Martin , 95 Va. 26, 27 S. E. 810.....	1205, 1210
Martin v. Meritt , 57 Ind. 34, 26 Am. Rep. 45.....	1370
Martin v. Murphy , 129 Ind. 464, 28 N. E. 1118.....	537
Martin v. Nutkin , 2 P. Wms. 266.....	531
Martin v. O'Bannon , 35 Ark. 62.....	1394
Martin v. Platte Valley Sheep Co. (Wyo.), 76 Pac. 571.....	828
Martin v. Pond , 30 Fed. 15.....	28
Martin v. Price , [1894] 1 Ch. 276.....	940, 944, 953
Martin v. Thomas (W. Va.), 49 S. E. 118.....	1385
Martin v. Van Schaick , 4 Paige (N. Y.), 479.....	172
Martin v. Wright , 6 Sim. 297.....	975
Martindale v. Alexander , 26 Ind. 104, 87 Am. Dec. 458.....	1212
Martinius v. Helmuth , 2 Ves. & B. 412.....	70
Martyn v. Perryman , 1 Ch. Rep. 235.....	1186
Marvel Co. v. Pearl , 114 Fed. 946.....	983
Marvin v. Brooks , 94 N. Y. 71.....	1518, 1521
Marvin v. Ellwood , 11 Paige, 365.....	88, 97
Marvine v. Drexel , 68 Pa. St. 362.....	165
Marx & Haas Clothing Co. v. Watson (1902), 168 Mo. 133, 90 Am.	
St. Rep. 440, 67 S. W. 391, 56 L. R. A. 951.....	1032, 1036, 1037
Maryland Clay Co. v. Simpers , 96 Md. 1, 53 Atl. 424.....	1286
Maryland Construction Co. v. Kuper , 90 Md. 529, 45 Atl. 197....	1296
Maryland Steel Co. v. Marney , 91 Md. 360, 46 Atl. 1077.....	1103
Mason v. Armitage , 13 Ves. 25.....	1303
Mason v. Black , 87 Mo. 329, 345.....	1233
Mason v. Caldwell , 10 Ill. 196, 208, 209, 48 Am. Dec. 330.....	1296
Mason v. Dawson , 15 Misc. Rep. 595, 37 N. Y. Supp. 90.....	148
Mason v. Equitable Lodge Supreme Court , 77 Md. 483, 39 Am. St.	
Rep. 433, 27 Atl. 171.....	209
Mason v. Hamilton , 5 Sim. 19.....	89
Mason v. Henry , 152 N. Y. 529, 46 N. E. 837.....	375
Mason v. House , 20 Tex. Civ. App. 500, 49 S. W. 911.....	1102
Mason v. Independence , 61 Kan. 88, 59 Pac. 272.....	698
Mason v. Pigott , 11 Ill. 85.....	1089
Mason v. Supreme Court of Equitable League , 77 Md. 483, 39 Am.	
St. Rep. 433, 27 Atl. 171.....	212
Mason v. Westoby , L. R. 32 Ch. Div. 206.....	119
Masonic etc. Assn. v. Banks , 94 Va. 695, 27 S. E. 490.....	912
Massachusetts Ben. Life Assn. v. Lohmiller , 46 U. S. App. 103,	
74 Fed. 23, 20 C. C. A. 274.....	1119, 1120
Massenburg v. Denison , 71 Fed. 618, 18 C. C. A. 280, 30 U. S. App.	
612.....	59
Massie v. Mann , 17 Iowa, 131.....	1504
Massie v. Watts , 6 Cranch, 148, 3 L. ed. 181.....	16, 29
Massie v. Wilson , 16 Iowa, 390.....	1486
Masson v. Bovet , 1 Denio, 69, 43 Am. Dec. 651.....	1163
Masten v. Bowery Sav. Bank , 63 N. Y. Supp. 964, 31 Misc. Rep.	
178.....	93
Master v. Hansard , L. R. 4 Ch. D. 718.....	505

Masterson v. Ashcom , 54 Tex. 324.....	1120
Matarese v. Caldarone (R. I.) , 58 Atl. 976.....	1424
Mather v. Scoles , 35 Ind. 1.....	1332
Mathews v. Feaver , 1 Cox, 278, 280.....	1415
Mathewson v. Clarke , 6 How. 122, 12 L. ed. 370.....	1530
Mathis v. Pridham , 1 Tex. Civ. App. 58, 20 S. W. 1015.....	
.....	356, 358, 360, 1471
Matlock v. Babb , 31 Or. 516, 49 Pac. 873.....	1408, 1435
Matt v. Shoolbred , L. R. 20 Eq. 22.....	923
Matteson & Williamson Mfg. Co. v. Conley , 144 Cal. 483, 77 Pac. 1042.....	1409
Matthews v. Crowder , 11 Tenn. 737, 69 S. W. 779.....	1157
Matthews v. Gadd , 5 South Australian Law Reports, 129.....	1376
Matthews v. Hudson , 81 Ga. 120, 12 Am. St. Rep. 305, 7 S. E. 286.....	818
Matthews v. Matthews , 1 Edw. Ch. 567.....	1192, 1206
Matthews v. Shankland , 25 Misc. Rep. 604, 56 N. Y. Supp. 123.....	1011, 1030
Mathewson v. Johnson , Hoff. Ch. 560.....	1197
Mattingly v. Nye , 75 U. S. 370, 19 L. ed. 380.....	1428
Mattingly v. Speak , 4 Bush, 316.....	1144
Mattison v. Lake Shore & M. S. Ry. Co. , 3 Ohio Sup. & C. P. Dec. 526.....	1019
Mattlage v. New York El. R. Co. , 35 N. Y. Supp. 704, 14 Misc. Rep. 291, affirmed without opinion, 157 N. Y. 708, 52 N. E. 1124.....	771
Mattocks v. Young , 66 Me. 459, 467.....	1331
Maughlin v. Perry , 35 Md. 352.....	1332
Mauldin v. City Council of Greenville , 33 S. C. 1, 11 S. E. 434, 8 L. R. A. 291.....	610
Mauran v. Crown Carpet Lining Co. , 23 R. I. 344, 50 Atl. 387....	430
Mauri v. Heffernan , 13 Johns. 58.....	1479
Maxon v. Ayres , 28 Wis. 612.....	1248
Maxon v. Nancy , 14 R. I. 641.....	1171
Maxwell v. Peters Shoe Co. , 109 Ala. 371, 19 South. 412.....	261, 266, 272, 1446
Maxwell v. Pittenger , 3 N. J. Eq. 156.....	1331
Maxwell v. Wilmington Dental Mfg. Co. , 101 Fed. 852.....	411
Maxwell v. Wilson , 54 W. Va. 495, 46 S. E. 349.....	36
May v. Williams , 22 Ky. Law Rep. 1328, 60 S. W. 525.....	817
Mayer v. Haggerty , 138 Ind. 628, 38 N. E. 42.....	1211
Mayer v. Journeyman Stonecutters' Assn. , 47 N. J. Eq. 519, 20 L. R. A. 492.....	1017, 1025, 1056
Mayer v. Nelson , 54 Neb. 434, 74 N. W. 841.....	1124
Mayer v. Thomas , 97 Ga. 772, 25 S. E. 761.....	366
Mayer v. Wood , 56 Ga. 427, 429.....	198, 200
Mayes, Ex parte (Tex.) , 44 S. W. 831.....	589
Mayfield v. Wright (Ky.) , 54 S. W. 864.....	176
Maynard v. Bond , 67 Mo. 315.....	294
Maynard v. Railey , 2 Nev. 313.....	149, 262, 269
Mayo v. McPhaul , 71 Ga. 758.....	156
Mayor v. Camak , 75 Ga. 429.....	606
Mayor etc. v. North Shore etc. Co. , 9 Hun, 620.....	1227
Mayor etc. of Annapolis v. Gadd (Md.) , 57 Atl. 941.....	588
Mayor etc. of Baltimore v. Gill , 31 Md. 375.....	600, 610, 615, 630
Mayor etc. of Baltimore v. Keyser , 72 Md. 107, 19 Atl. 706.....	610, 626

Mayor etc. of Baltimore v. Poole, 97 Md. 67, 54 Atl. 681.....	702
Mayor etc. of Baltimore v. Porter, 18 Md. 284, 79 Am. Dec. 686..	702
Mayor etc. of Brooklyn v. Meserole, 26 Wend. 132.....	721, 723, 1222
Mayor etc. of Canton v. Canton etc. Warehouse (Miss.), 36 South. 266.....	864
Mayor etc. of Columbus v. Jaques, 30 Ga. 506.....	871, 877
Mayor etc. of Frostburg v. Wineland, 98 Md. 239, 103 Am. St. Rep. 399, 56 Atl. 811.....	637
Mayor etc. of Jersey City v. Gardner, 33 N. J. Eq. 622.....	482
Mayor etc. of Moultrie v. Patterson, 109 Ga. 370, 34 S. E. 600..	634
Mayor etc. of Newark v. Sayre, 60 N. J. Eq. 361, 45 Atl. 985, 48 L. R. A. 722, reversing 58 N. J. Eq. 136, 42 Atl. 1068....	966
Mayor etc. of New York v. Baumberger, 7 Rob. (N. Y.) 219. 931, 973	
Mayor etc. of New York v. Brady, 115 N. Y. 615, 22 N. E. 237	1076, 1078, 1092
Mayor etc. of Wolverhampton v. Emmons, [1901] 1 K. B. 515....	1277
Mayor of Berwick v. Murray, 7 De Gex, M. & G. 497.....	1482
Mayor of Cardiff v. Cardiff etc. Co., 4 De Gex & J. 596..	881, 882, 883
Mayor of Frederick v. Groshon, 30 Md. 436, 96 Am. Dec. 591....	765
Mayrant v. Dickerson, Rich. Eq. Cas. (S. C.) 201.....	571
Mays v. Rose, Freem. Ch. (Miss.) 703.....	
.....	107, 109, 113, 114, 189, 262, 266, 286
Mayse v. Gaddis, 2 App. D. C. 20.....	1235
Maysville etc. Co. v. Beyersdorfer, 19 Ky. Law Rep. 1212, 43 S. W. 254.....	888
Mazet v. City of Pittsburg, 137 Pa. St. 548, 20 Atl. 693.....	626
McAfee v. Reynolds, 130 Ind. 33, 30 Am. St. Rep. 194, 28 N. E. 423.....	60
McAlister v. Henderson, 134 Ind. 453, 34 N. E. 221.....	942
McAllen v. Rhodes, 65 Tex. 348.....	590, 593
McAlister v. Harman, 97 Va. 543, 34 S. E. 474.....	354
McAllister v. Harman, 101 Va. 17, 42 S. E. 920.....	1321, 1324
McAnally v. Glidden, 30 Ind. App. 22, 65 N. E. 291.....	399
McAnnulty v. McAnnulty, 120 Ill. 26, 60 Am. Rep. 552, 11 N. E. 397.....	1361
McAnrow v. Martin, 183 Ill. 467, 56 N. E. 168.....	428
McArthur v. Kelly, 5 Ohio, 139.....	576
McArthur v. Martin, 23 Minn. 74.....	1403, 1507
McBrayer v. Hardin, 7 Ired. Eq. 1, 53 Am. Dec. 389.....	843
McBride v. Board of Commrs., 44 Fed. 17.....	478
McBride v. Newlin, 129 Cal. 36, 61 Pac. 577.....	602
McBride v. Potter-Lovell Co., 169 Mass. 7, 61 Am. St. Rep. 265, 47 N. E. 242.....	1483
McBryan v. Universal Elevator Co., 130 Mich. 111, 97 Am. St. Rep. 453, 89 N. W. 683.....	356
McBryde v. Sayre, 86 Ala. 458, 5 South. 791, 3 L. R. A. 861....	942
McBryde v. Weekes, 22 Beav. 533.....	1335, 1339
McCabe v. Healy, 138 Cal. 81, 70 Pac. 1008.....	1358
McCabe v. Hunter's Heirs, 7 Mo. 356.....	1183
McCabe v. Mathews, 155 U. S. 550, 556, 15 Sup. Ct. 190, 39 L. ed. 257.....	1338, 1339
McCabe v. Sinclair (N. J. Eq.), 58 Atl. 412.....	1530
McCagg v. Woodman, 28 Ill. 84.....	371
McCall, Appeal of, 56 Pa. St. 363.....	1216
McCall v. Carpenter, 59 U. S. (18 How.) 297, 15 L. ed. 389....	1200
McCalley v. Otey, 90 Ala. 302, 8 South. 157.....	565

McCalley v. Otey, 99 Ala. 584, 42 Am. St. Rep. 87, 12 South. 406.	565
McCandless, Appeal of, 13 Pa. St. 432.....	1210
McCann v. Randall, 47 Mass. 81, 99, 9 Am. St. Rep. 666, 17 N. E.	
75, 88.....	16
McCarley v. McGhee, 108 Fed. 494.....	352
McCarmel v. Shaw, 155 Ill. 37, 46 Am. St. Rep. 311, 39 N. E. 584,	
27 L. R. A. 580.....	606
McCartan v. Inhabitants of City of Trenton, 57 N. J. Eq. 571,	
41 Atl. 830.....	720
McCarter v. Armstrong, 32 S. C. 203, 10 S. E. 953, 8 L. R. A.	
625.....	1278
McCarthy v. Gaston Ridge Mill & M. Co., 144 Cal. 542, 78 Pac. 7..	920
McCarthy v. Gould, 1 B. & Beatty, 387, 389, 390.....	1415
McCartney v. Garnhart, 45 Mo. 593, 100 Am. Dec. 397.....	991
McCarty v. May (Tex. Civ. App.), 74 S. W. 804.....	1290
McCarty v. Stanwix, 16 Misc. Rep. 132, 38 N. Y. Supp. 820....	143
McCaslin v. State, 44 Ind. 151, 174.....	197
McCaul v. Braham, 16 Fed. 37, 42.....	519, 1299
McChord v. Cincinnati etc. R. Co., 183 U. S. 483, 22 Sup. Ct. 165,	
46 L. ed. 289.....	585
McClarín v. Anderson, 109 Ala. 571, 19 South. 982.....	1411
McClaskey v. Barr, 42 Fed. 609.....	1198
McClellan v. Taylor, 54 S. C. 430, 32 S. E. 527.....	831, 832
McClelland v. McClelland, 176 Ill. 83, 51 N. E. 559....	1158, 1160, 1161
McClenney v. McClenney, 3 Tex. 192, 49 Am. Dec. 738.....	1439
McClintie v. Manns, 4 Munf. (Va.) 328.....	1206
McClintock v. Fontaine, 119 Fed. 448.....	1482, 1486
McClintock v. Laing, 22 Mich. 212.....	1258
McCloskey v. Doherty, 97 Ky. 200, 30 S. W. 649.....	830
McClung v. Capehart, 24 Minn. 17.....	1528, 1533
McClung v. Livesay, 7 W. Va. 329.....	647, 748
McClung v. McWhorter, 47 W. Va. 150, 81 Am. St. Rep. 785, 34	
S. E. 740.....	1114
McClure v. Miller, Bail. Eq. 107, 21 Am. Dec. 522.....	1076
McClurg, Appeal of, 58 Pa. St. 51.....	524
McClurg v. McSpadden, 101 Tenn. 433, 47 S. W. 698.....	1447
McCombs v. Merryhew, 40 Mich. 721.....	301
McConkey v. Smith, 73 Ill. 313.....	676, 685
McConkie v. Landt (Iowa), 101 N. W. 1121.....	1118
McConnaughy v. Pennoyer, 43 Fed. 342.....	493, 1225
McConnel v. Kibbe, 43 Ill. 12, 92 Am. Dec. 93.....	1185
McConnell v. Beattie, 34 Ark. 113.....	1506
McConnell v. Muldoon, 30 Abb. N. C. 352, 24 N. Y. Supp. 902..	1404
McCool v. McNamara, 19 Abb. N. C. 344.....	154
McCord v. High, 24 Iowa, 336.....	763
McCord v. Pike, 121 Ill. 288, 2 Am. St. Rep. 85, 12 N. E. 259..	601, 609
McCorkell v. Karhoff, 90 Iowa, 545, 58 N. W. 813.....	1165
McCorkle v. Brown, 9 Smedes & M. 167.....	1257
McCorkle v. Herrman, 117 N. Y. 297, 22 N. E. 948.....	299
McCormick v. Hartley, 107 Ind. 248, 6 N. E. 357.....	571, 816
McCormick v. McClure, 6 Blackf. (Ind.) 466, 39 Am. Dec. 441..	18
McCormick v. Stephany, 61 N. J. Eq. 208, 48 Atl. 25.....	1296
McCormick v. Supreme Council, 39 N. Y. Supp. 1010, 6 App. Div.	
175.....	76
McCormick Harvesting Machine Co. v. De La Mater, 114 Iowa,	
382, 86 N. W. 365.....	572

McCornack v. Salem Consol. St. Ry. Co. , 35 Or. 543, 56 Pac. 518.....	419
McCowan v. Brooks , 113 Ga. 532, 39 S. E. 115.....	1500
McCoy v. Chillicothe , 3 Ohio. 370, 17 Am. Dec. 607.....	727
McCoy v. Johnson , 70 Md. 490, 17 Atl. 387.....	1231
McCoy v. McMurtrie , 12 Phila. 180.....	90
McCrary v. Pennsylvania Canal Co. , 5 Fed. 367.....	980
McCrary v. Williams , 127 Ala. 251, 28 South. 695.....	1143
McCreedy v. Van Antwerp , 24 Hun, 322.....	1487
McCreary v. Gewinner , 103 Ga. 528, 29 S. E. 960.....	487
McCreery v. Berney Nat. Bank , 116 Ala. 224, 67 Am. St. Rep. 105, 22 South. 577.....	111
McCreery v. Inge , 63 N. Y. Supp. 158, 49 App. Div. 133.....	76
McCreery v. Sutherland , 23 Md. 471, 87 Am. Dec. 578.....	1132
McCreery Land & Inv. Co. v. Myers (S. C.) , 49 S. E. 848.....	1173
McCrory v. O'Keefe , 162 Ind. 534, 70 N. E. 812.....	686
McCue v. McCue , 41 W. Va. 151, 23 S. E. 689.....	1438
McCullom v. Mackrell , 13 S. D. 262, 83 N. W. 255.....	1260, 1384
McCullough v. Brown , 41 S. C. 220, 19 S. E. 458, 23 L. R. A. 410..	629
McCullough v. Denver , 39 Fed. 307.....	830
McCullough v. Irvine's Exrs. , 13 Pa. St. 438.....	804
McCullough v. Jones , 91 Ala. 186, 8 South. 696.....	193
McCullough v. Merchants' L. & T. Co. , 29 N. J. Eq. 217.....	282
McCurdy v. City of Lawrence , 9 Kan. 883, 57 Pac. 1057.....	698
McCurry v. Gibson , 108 Ala. 451, 51 Am. St. Rep. 177, 18 South. 806.....	524, 537
McDavid v. McLean , 202 Ill. 354, 66 N. E. 1075.....	1482
McDearman v. McClure , 31 Ark. 559.....	1213
McDermott v. Strong , 4 Johns. Ch. 687.....	1447
McDonald v. Allen , 37 Wis. 108, 19 Am. Rep. 754.....	94
McDonald v. Early , 15 Neb. 63, 17 N. W. 257.....	1251
McDonald v. Escanaba , 62 Mich. 555, 29 N. W. 93.....	705
McDonald v. Holmes , 22 Or. 212, 29 Pac. 735.....	1533
McDonald v. Pearson , 11 Ala. 630, 21 South. 534.....	1102
McDonald v. Rehner , 22 Fla. 198.....	608
McDonald v. Teague , 119 N. C. 604, 26 S. E. 158.....	724
McDonald v. Williams , 174 U. S. 397, 19 Sup. Ct. 743, 43 L. ed. 1022.....	1456
McDonough v. Robbins , 1 Mo. App. 78, 60 Mo. App. 156.....	889
McDougald v. Dougherty , 14 Ga. 674.....	1503
McDougall v. Gardiner , L. R. 1 Ch. Div. 14.....	546
McDougall v. Walling , 21 Wash. 478, 75 Am. St. Rep. 669, 58 Pac. 669.....	1105
McEacharn v. Colton , [1902] App. Cas. (Priv. Coun.) 104.....	514
McEachern v. Brackett , 8 Wash. 652, 40 Am. St. Rep. 922.....	1117
McElhinney v. City of Superior , 32 Neb. 744, 49 N. W. 705.....	630
McElroy v. Kansas City , 21 Fed. 257..... 835, 853, 856, 764, 785, 789	
McElvey v. Lewis , 76 N. Y. 373.....	147
McFadden v. Swinerton , 36 Or. 336, 59 Pac. 816, 62 Pac. 12....	82, 89
McFarlain v. Town of Jennings , 106 La. 541, 31 South. 62.....	633
McFarland v. Stanton Mfg. Co. , 53 N. J. Eq. 649, 51 Am. St. Rep. 647, 33 Atl. 962.....	1268
McFerran v. Davis , 70 Ga. 661.....	162
McFerran v. Jones , 2 Litt. 220, 222, 223.....	1415
McGarrah v. Prather , 1 Blackf. 299.....	97
McGean v. Metropolitan El. R. Co. , 133 N. Y. 9, 30 N. E. 647..	778, 780

McGee v. Sweeney, 84 Cal. 100, 23 Pac. 1117.....	31
McGeorge v. Big Stone Gap Imp. Co., 57 Fed. 262.....	108, 205
McGhee Irr. Ditch Co. v. Hudson, 85 Tex. 587, 22 S. W. 398....	767
McGilliard v. Donaldsville etc. Works, 104 La. Ann. 544, 29 South. 254, 81 Am. St. Rep. 145.....	277, 283
McGillin v. Chase County, 39 Neb. 422, 58 N. W. 138.....	717
McGillivray v. Evans, 27 Cal. 92.....	1188
McGowan v. Myers, 66 Iowa, 99, 23 N. W. 282.....	308
McGowin v. Remington, 12 Pa. St. 56, 51 Am. Dec. 584....	849, 1265
McGreal v. Taylor, 167 U. S. 688, 17 Sup. Ct. 961, 42 L. ed. 326..	1499
McGregor v. Silver King Min. Co., 14 Utah, 47, 60 Am. St. Rep. 883, 45 Pac. 1091.....	831, 840
McGregor-Noe Hardware Co. v. Horn, 146 Mo. 129, 47 S. W. 957.....	1419
McGuire v. Caskey, 62 Ohio St. 419, 57 N. E. 53.....	510
McGuire v. Stevens, 42 Miss. 724, 2 Am. Rep. 649.....	1354
McHenry v. Hazard, 45 Barb. 657.....	84, 96
McHenry v. Hazard, 45 N. Y. 580.....	96, 1156
McHenry v. Jewett, 90 N. Y. 58.....	483
McHugh v. Louisville Bridge Co., 23 Ky. Law Rep. 1546, 65 S. W. 456.....	914
McIlhenny v. Binz, 80 Tex. 1, 26 Am. St. Rep. 705, 13 S. W. 655	208, 209, 421
McIlvaine v. Smith, 42 Mo. 45, 97 Am. Dec. 295.....	1420
McIndoe v. Hazelton, 19 Wis. 567, 88 Am. Dec. 701.....	1119
McInerney v. Huelefeld, 116 Ky. 28, 25 Ky. Law Rep. 272, 75 S. W. 237.....	699
McInnis v. Pace, 78 Miss. 550, 29 South. 835.....	1004
McInnis v. Wiscasset Mills, 78 Miss. 52, 28 South. 725.....	1426
McIntire v. Pryor, 173 U. S. 38, 19 Sup. Ct. 352, 43 L. ed. 606 (affirming 10 App. D. C. 432).....	40, 47
McIntosh v. Perkins, 13 Mont. 143, 32 Pac. 653.....	147
McIntyre v. Board of Commissioners of El Paso County, 15 Colo. App. 78, 61 Pac. 237.....	609, 616, 631
McIntyre v. McGavin, [1893] App. Cas. 268.....	869
McIntyre v. Williamson (Okla.), 54 Pac. 928.....	733
McKaig v. Hebb, 42 Md. 227.....	1531
McKaig v. James, 66 Md. 583, 8 Atl. 663.....	190
McKane v. Adams, 123 N. Y. 609, 20 Am. St. Rep. 785, 25 N. E. 1057.....	559
McKay v. Calderwood (Wash.), 79 Pac. 629.....	1351
McKay v. Chapin, 120 N. C. 159, 26 S. E. 701.....	833
McKay v. Joy, 70 Cal. 581, 11 Pac. 832.....	1531
McKean v. Read, 16 Ky. 395, 12 Am. Dec. 318.....	1107, 1108
McKechnie v. McKechnie, 39 N. Y. Supp. 402, 3 App. Div. 91....	45
McKee v. Delaware etc. Co., 125 N. Y. 353, 21 Am. St. Rep. 740, 26 N. E. 305.....	869, 970
McKee v. Grand Rapids (Mich.), 100 N. W. 580.....	922
McKee v. Higbee, 180 Mo. 263, 79 S. W. 407.....	1287
McKee v. New York El. R. Co., 79 Hun, 366, 29 N. Y. Supp. 457..	781
McKee v. Pendleton, 154 Ind. 652, 57 N. E. 532.....	690
McKee v. Pendleton, 162 Ind. 667, 69 N. E. 997.....	690
McKee v. Phillips, 9 Watts, 85.....	1355
McKelvey's Appeal, 72 Pa. St. 409.....	1532
McKenna v. George, 2 Rich. Eq. (S. C.) 15.....	1489
McKenzie v. Donald, 61 Miss. 452.....	1171

McKenzie v. Hesketh, 7 Ch. D. 675, 682.....	1304
McKinney v. Kuhn, 59 Miss. 186.....	70, 85
McKinney v. Minnehaha County (S. D.), 97 N. W. 15.....	739
McKinnie v. Shaffer, 74 Cal. 614, 16 Pac. 509.....	1247
McKinnon v. Wolfenden, 78 Wis. 237, 47 N. W. 436.....	348
McKissack v. Voorhees, 119 Ala. 101, 24 South. 523.....	1425, 1446
McLachlan v. Incorporated Town of Gray, 105 Iowa, 259, 74 N. W. 773.....	786
McLaffin v. Jones, 155 Ill. 539, 40 N. E. 330, affirming 55 Ill. App. 518.....	56
McLain v. Maricle, 60 Neb. 353, 83 N. W. 85.....	631
McLane v. Placerville & S. V. R. Co., 66 Cal. 606, 6 Pac. 748.....	255, 409, 410
McLaren v. First Nat. Bank of Milwaukee, 76 Wis. 259, 45 N. W. 223.....	367, 374
McLaughlin v. Kelly, 22 Cal. 212.....	848
McLaughlin v. Sandusky, 17 Neb. 110, 22 N. W. 241.....	863
McLean v. Fleming, 96 U. S. 245, 24 L. ed. 828.....	981
McLellan v. McDonnell, 78 Cal. 273, 20 Pac. 566.....	1254
McLellan v. Osborne, 51 Me. 118.....	1520 1522
McLeod v. Dial, 63 Ark. 10, 37 S. W. 306.....	804
McLeod v. Lloyd, 43 Or. 260, 71 Pac. 795, 74 Pac. 491.....	1234
McLeran v. McNamara, 55 Cal. 508.....	1094
McLin v. McNamara, 2 Dev. & B. Eq. 82.....	1517
McLure v. Melton, 34 S. C. 377, 27 Am. St. Rep. 820, 13 S. E. 615, 13 L. R. A. 723.....	1497
McMahan v. Kimball, 3 Blackf. 1.....	1169, 1170
McMahon v. Gray, 150 Mass. 289, 15 Am. St. Rep. 202, 22 N. E. 923, 5 L. R. A. 748.....	1171
McMahon v. West Kent Iron Works Co., [1891] 2 Ch. 148.....	231
McMannomy v. Chicago etc. R. Co., 167 Ill. 497, 47 N. E. 712.....	1437
McMartin v. Stevens (Wash.), 79 Pac. 1099.....	526
McMath v. De Bardelaben, 75 Ala. 68.....	1182, 1193
McMaugh v. Burke, 12 R. I. 499.....	894
McMechan v. Warburton, L. R., 1 Ch. D. 435.....	1144
McMeekin v. Brummet, 2 Hill Eq. 643.....	1213
McMickle v. Hardin, 25 Tex. Civ. App. 222, 61 S. W. 322....	647, 741
McMillian v. Lauer (Sup. Ct.), 24 N. Y. Supp. 951.....	767
McMinn v. Karter, 123 Ala. 502, 26 South. 649.....	838
McMonagle v. McGlinn, 85 Fed. 88.....	54, 56
McMorran v. Fitzgerald, 106 Mich. 649, 58 Am. St. Rep. 511, 64 N. W. 569.....	870
McMullen v. Bank of Penn Township, 2 Pa. St. 343.....	1480
McMullen v. Vanzant, 73 Ill. 190.....	1271
McMullen Lumber Co. v. Strother (C. C. A.), 136 Fed. 295.....	1518
McMurray v. Rawson, 3 Hill (N. Y.), 59.....	1514
McMurray v. Sisters of Charity, 68 N. J. L. 312, 53 Atl. 389.....	66
McMurty v. Keifner, 36 Neb. 522, 54 N. W. 844.....	1194
McNair v. Pope, 96 N. C. 502, 2 S. E. 54.....	158
McNaney v. Hall, 159 N. Y. 544, 54 N. E. 1093.....	1441
McNeonomy v. Baud, 87 Cal. 134, 26 Pac. 795.....	915
McNew v. Smith, 5 Gratt. 84.....	1422
McNiece v. Sohmer, 29 Misc. Rep. 238, 61 N. Y. Supp. 193.....	590, 594
McNeill v. Edie, 24 Kan. 108.....	1113
McNeill v. Williams, 11 Jur. 345, Ames, Cas. in Eq. Jur., 652....	986
McNulta v. Ensich, 134 Ill. 46, 24 N. E. 631.....	350

McNulta v. Lochridge, 141 U. S. 327, 12 Sup. Ct. 11, 35 L. ed. 796.....	338, 341, 350, 383
McNulta v. Lockridge, 137 Ill. 270, 31 Am. St. Rep. 362, 27 N. E. 452.....	341, 350
McNulty v. Brooklyn Heights R. Co., 31 Misc. Rep. 674, 66 N. Y. Supp. 57.....	1062
McNulty v. Mt. Morris etc. Co., 172 N. Y. 410, 65 N. E. 196....	923
McPeck v. Graham (W. Va.), 49 S. E. 125.....	58
McPherson v. Meek, 30 Mo. 345.....	1477
McPike v. Pen, 51 Mo. 63.....	711, 1228
McPike v. Pew, 48 Mo. 525.....	710
McQueen v. Farquhar, 11 Ves. 467.....	1364
McQuerry v. Gilliland, 89 Ky. 434, 12 S. W. 1037, 7 L. R. A. 454..	31
McQuiddy v. Ware, 87 U. S. (20 Wall.) 14, 22 L. ed. 311.....	1116
McQuigg v. Cullins, 56 Ohio St. 649, 47 N. E. 595.....	786, 929
McRae v. Bowers Dredging Co., 86 Fed. 344.....	288
McRee v. Gardner, 131 Mo. 599, 33 S. W. 166.....	1231
McReynolds v. Grubb, 150 Mo. 352, 73 Am. St. Rep. 448, 51 S. W. 822.....	1147
McShirley v. Birt, 44 Ind. 382.....	1478
McTeer v. Briscoe (Tenn. Ch. App.), 61 S. W. 564.....	1100
McTiggan v. Hunter, 18 R. I. 776, 30 Atl. 962, 2 Ames Cas. Eq. Jur., 71, 73, and notes.....	647, 648, 738
McWethy v. Aurora etc. Co., 202 Ill. 218, 67 N. E. 9.....	926
McWhirter v. Halstead, 24 Fed. 828.....	65
McWhorter v. O'Neal (Ga.), 51 S. E. 288.....	1144
McWhorter v. Pensacola & A. R. R. Co., 24 Fla. 417, 12 Am. St. Rep. 220, 3 South. 129, 2 L. R. A. 508.....	582
McWilliams v. Bones, 8 Ga. 203, 10 S. E. 724.....	1500
Mead v. Acton, 139 Mass. 341, 345, 1 N. E. 413.....	468
Mead v. Burk, 156 Ind. 577, 60 N. E. 338...107, 108, 110, 111, 112, 193	
Mead v. Merritt, 2 Paige, 402.....	32
Mead v. Mitchell, 17 N. Y. 210, 72 Am. Dec. 455.....	1182, 1207
Mead v. Stirling, 62 Conn. 586, 27 Atl. 591, 23 L. R. A. 227.....	555
Meaden v. Sealey, 6 Hare, 620.....	166
Meadow Valley Mining Co. v. Dodds, 6 Nev. 261.....	811
Mears v. Lamona, 17 Wash. 148, 49 Pac. 251.....	1419
Meason v. Kaine, 63 Pa. St. 335.....	1272
Mechanics' & Traders' Bank v. Debolt, 18 How. (59 U. S.) 380, 15 L. ed. 458.....	547
Mechanics' Bank v. Kansas, 73 Mo. 555.....	711
Mechanics' Bank v. Seton, 1 Pet. 299, 7 L. ed. 152.....	1396
Mechanics' Foundry of San Francisco v. Ryall, 75 Cal. 601, 17 Pac. 703.....	858
Mechanics' Nat. Bank v. Landauer, 68 Wis. 44, 31 N. W. 160..	345
Mechanics' Nat. Bank v. Pennsylvania Steel Co., 57 N. J. L. 336, 30 Atl. 545.....	372
Medford v. Levy, 31 W. Va. 649, 13 Am. St. Rep. 887, 8 S. E. 302, 2 L. R. A. 368.....	902
Mee v. Benedict, 98 Mich. 260, 39 Am. St. Rep. 543, 57 N. W. 175, 22 L. R. A. 641.....	1195
Meech v. Allen, 17 N. Y. 300, 72 Am. Dec. 465.....	1536
Meeker v. Sprague, 5 Wash. 242, 31 Pac. 628.....	347
Meem v. Rucker, 10 Gratt. 506.....	1108
Meetz v. Mohr, 141 Cal. 667, 75 Pac. 298.....	567
Meggett v. City of Eau Claire, 81 Wis. 326, 51 N. W. 566.....	758

Mehler v. Cornwell, 3 App. D. C. 92.....	1430
Mehlhop v. Ellsworth, 95 Iowa, 657, 64 N. W. 638.....	1424
Meier v. Kansas Pac. Railway Co., 5 Dill. 478, Fed. Cas. No. 9395.....	433
Meier v. Waco State Bank (Tex. Civ. App.), 27 S. W. 881.....	1407
Melendy v. Barbour, 78 Va. 544.....	330, 331, 347
Melick v. Cross (N. J. Eq.), 51 Atl. 16, 23.....	1331
Melms v. Pabst Brewing Co., 93 Wis. 153, 57 Am. St. Rep. 899, 66 N. W. 518.....	44, 48, 54, 57
Melms v. Pabst Brewing Co., 104 Wis. 7, 79 N. W. 738, 46 L. R. A. 478.....	805
Melody v. Goodrich, 70 N. Y. Supp. 568, 35 Misc. Rep. 138.....	579
Memphis & C. R. Co. v. Greer, 87 Tenn. (3 Pickle) 698, 11 S. W. 931, 4 L. R. A. 858.....	1086
Memphis & C. R. Co. v. Scruggs, 50 Miss. 284.....	1271, 1272
Memphis & C. R. Co. v. Woods, 88 Ala. 630, 16 Am. St. Rep. 81, 7 South. 108, 7 L. R. A. 605.....	546, 548
Memphis News Pub. Co. v. Southern R. Co., 110 Tenn. 684, 75 S. W. 941.....	1062
Menard v. Hood, 68 Ill. 121.....	622
Mendelson v. McCabe, 144 Cal. 230, 103 Am. St. Rep. 78, 77 Pac. 915.....	832
Mendenhall v. Denham, 35 Fla. 250, 17 South. 561.....	589
Mendenhall v. Harrisburgh etc. Co., 27 Or. 38, 39 Pac. 399.....	846
Meneely v. Meneely, 3 Thomp. & C. 540, 1 Hun. 367.....	997
Menendez v. Holt, 128 U. S. 514, 9 Sup. Ct. 143, 32 L. ed. 526.50, 981	
Meng v. Coffey (Neb.), 93 N. W. 713.....	970
Menkler v. United States Sheep Co., 4 N. D. 507, 62 N. W. 594, 33 L. R. A. 546.....	1432
Mercantile Ins. Co. v. River Plate etc. Agency Co., [1892] 2 Ch. 303.....	450
Mercantile Nat. Bank v. Hubbard, 105 Fed. 809, 45 C. C. A. 66.....	661
Mercantile Nat. Bank v. MacFarlane, 71 Minn. 497, 70 Am. St. Rep. 352, 74 N. W. 287.....	1506
Mercantile Nat. Bank v. Mayor etc. of New York, 172 N. Y. 35, 64 N. E. 756.....	721
Mercantile Nat. Bank v. McFarlane, 71 Minn. 497, 70 Am. St. Rep. 352, 74 N. W. 287.....	368
Mercantile Nat. Bank v. New York, 27 Misc. Rep. 32, 57 N. Y. Supp. 254.....	720, 721
Mercantile Realty Co. v. Stetson, 120 Iowa, 324, 94 N. W. 859.....	401
Mercantile Trust & D. Co. v. Roanoke & S. Ry. Co., 109 Fed. 3.....	1080
Mercantile Trust & D. Co. v. Water Co., 111 Ala. 119, 19 South. 17.....	282
Mercantile Trust Co. v. Hart, 76 Fed. 673, 22 C. C. A. 473, 35 L. R. A. 352.....	1501, 1505
Mercantile Trust Co. v. Kanawha etc. Ry. Co., 39 Fed. 337.....	451
Mercantile Trust Co. v. Kanawha etc. Ry. Co., 58 Fed. 6, 7 C. C. A. 3.....	1505
Mercantile Trust Co. v. Missouri, K. & T. R. Co., 36 Fed. 221, 1 L. R. A. 397.....	250, 251
Mercantile Trust Co. v. Missouri, K. & T. R. Co., 41 Fed. 8, 11.....	399
Merced Bank v. Ivett, 127 Cal. 136, 59 Pac. 393.....	1459
Merced Mining etc. Co. v. Fremont, 7 Cal. 317, 68 Am. Dec. 262.....	825, 846, 1188, 1247
Mercer v. Floyd, 24 Misc. Rep. 164, 53 N. Y. Supp. 433.....	619

Merchant v. Northwestern M. L. I. Co., 57 App. Div. 375, 68 N. Y. Supp. 406.....	68
Merchants' & Mfg. Nat. Bank of Detroit v. Kent Circuit Judge, 43 Mich. 292, 5 N. W. 627	118, 280
Merchants' & Mechanics' Bank v. Tillman, 106 Ga. 55, 31 S. E. 794	570
Merchants' & Planters' Line v. Wagoner, 71 Ala. 581.....	211
Merchants' Bank v. Evans, 51 Mo. 335	1226, 1235, 1240
Merchants' Nat. Bank v. McDonald, 63 Neb. 363, 88 N. W. 492, 89 N. W. 770	1452
Merchants' Nat. Bank v. McGee, 108 Ala. 304, 19 South. 356....	1425
Merchants' Nat. Bank v. Murphy (Iowa), 101 N. W. 441	1148
Merchants' Nat. Bank v. Northwestern Mfg. etc. Co., 48 Minn. 349, 51 N. W. 117	448
Merchants' Nat. Bank v. Paine, 13 R. I. 592.....	1429
Merchants' Nat. Bank v. Penn. Steel Co., 57 N. J. L. 336, 30 Atl. 545	445
Merchants' Nat. Bank v. Stanton, 55 Minn. 211, 43 Am. St. Rep. 491, 56 N. W. 821	1403
Mercur Gold M. & M. Co. v. Spry, 16 Utah, 222, 52 Pac. 382....	743
Meredith Village Sav. Bank v. Simpson, 22 Kan. 414.....	330, 331, 346, 348
Meridian N. & P. Co. v. D. & W. P. Co., 70 Miss. 695, 12 South. 702	262
Meriwether v. Bell, 22 Ky. Law Rep. 844, 58 S. W. 987.....	1418
Meriwether v. Joy, 85 Mo. App. 634	505
Merrell v. Witherby, 120 Ala. 418, 74 Am. St. Rep. 39, 20 South. 994, 26 South. 974	1351
Merriam v. Board of Supervisors, 72 Cal. 517, 14 Pac. 137.....	601
Merriam v. St. L. etc. R. Co., 136 Mo. 145, 36 S. W. 630. 248, 262, 275	
Merriam v. Victory Min. Co., 37 Or. 321, 56 Pac. 75, 58 Pac. 37, 60 Pac. 997	415
Merrill v. Beckwith, 163 Mass. 503, 10 N. E. 855	26
Merrill v. Cape Ann. Granite Co., 161 Mass. 212, 36 N. E. 797, 23 L. R. A. 313	371
Merrill v. Commonwealth Mut. Fire Ins. Co., 166 Mass. 238, 44 N. E. 144	295, 307
Merrill v. First Nat. Bank, 94 Cal. 59, 29 Pac. 242.....	1099
Merrill v. Gorham, 6 Cal. 41	667
Merrill v. Humphrey, 24 Mich. 170	704, 706
Merrill v. Lake, 16 Ohio, 373, 47 Am. Dec. 377	1088
Merrill v. Miller, 28 Mont. 134, 72 Pac. 423	1268
Merrill v. Plainfield, 45 N. H. 126	600
Merrill v. Prescott, 67 Kan. 767, 74 Pac. 259	1466
Merriman v. Polk, 5 Heisk. 717	1225
Merriman v. Russell, 2 Jones Eq. 470	1175, 1178
Merriman v. Walton, 105 Cal. 403, 45 Am. St. Rep. 50, 38 Pac. 1108, 30 L. R. A. 786	1093
Merritt v. American Steel Barge Co., 79 Fed. 228, 24 C. C. A. 530.....	324, 328
Merritt v. Ehrman, 116 Ala. 278, 22 South. 514.....	1152
Merritt v. Gibson, 129 Ind. 155, 27 N. E. 136, 15 L. R. A. 277..	180
Merritt v. Hughes, 36 W. Va. 356, 15 S. E. 56	1195
Merritt v. Judd, 14 Cal. 64	1188

Merritt v. Shaw, 15 Grant Ch. (U. C.) 323.....	1204
Merritt v. Sparling, 88 Hun, 491, 34 N. Y. Supp. 882.....	389
Merryman v. State, 5 Har. & J. (Md.) 423.....	1502
Merryweather v. Moore, [1892] 2 Ch. 518, 522	490
Mersick v. Hartford & W. H. Horse R. Co., 76 Conn. 11, 100 Am. St. Rep. 977, 55 Atl. 664	415
Merton v. O'Brien, 117 Wis. 437, 94 N. W. 340	56
Mesker v. Koch, 76 Ind. 68	689
Mestier v. Chevallier Pav. Co., 51 La. Ann. 142, 24 South. 799	261, 263, 274
Metcalf v. Barker, 187 U. S. 165, 23 Sup. Ct. 67, 47 L. ed. 122..	1447
Metcalf v. Gilmore, 59 N. H. 417, 47 Am. Rep. 217	1127
Metcalf v. Hart, 3 Wyo. 513, 31 Am. St. Rep. 122, 27 Pac. 900, 31 Pac. 407	1086
Metcalf v. Hervey, 1 Ves. Sr. 248	90
Metcalfe v. Brand, 86 Ky. 331, 9 Am. St. Rep. 282, 5 S. W. 773..	994
Metcalfe v. Miller, 96 Mich. 459, 35 Am. St. Rep. 617, 56 N. W. 16	1184, 1185
Methodist Episcopal Church v. Roberson (N. J. Ch.), 58 Atl. 1056.	1324
Methodist Episcopal Society v. Akers, 167 Mass. 560, 46 N. E. 381.....	855
Methodist Protestant Church v. City of Baltimore, 6 Gill, 391, 48 Am. Dec. 540	702
Metropolitan Asylum v. Hill, L. R. 6 App. Cas. 196.....	871
Metropolitan Electric Supply Co., Ltd., v. Gender, [1901] 2 Ch. 799	520, 530
Metropolitan El. Ry. Co. v. Johnston, 158 N. Y. 739, 53 N. E. 1128 (affirming 84 Hun, 83, 32 N. Y. Supp. 49).....	1078
Metropolitan Exhibition Co. v. Ewing, 42 Fed. 198, 7 L. R. A. 381	522, 1275, 1299
Metropolitan Land Co. v. Manning, 98 Mo. App. 248, 71 S. W. 696	1022, 1026
Metropolitan Life Ins. Co. v. McNall, 81 Fed. 888.....	583
Metropolitan Lumber Co. v. Lake Superior etc. Co., 101 Mich. 577, 60 N. W. 278	1148
Metropolitan Trust Co. v. Columbus, S. & H. Ry. Co., 95 Fed. 18	305, 306
Metzger v. Burnett, 5 Kan. App. 374, 48 Pac. 599	1434
Metzker v. Hochrein, 107 Wis. 267, 81 Am. St. Rep. 841, 83 N. W. 308, 50 L. R. A. 305	902
Meux v. Anthony, 11 Ark. (6 Eng.) 411, 52 Am. Dec. 274.....	1435
Meux v. Cobley, [1892] 2 Ch. 253	807
Meyer v. Harris, 61 N. J. L. 83, 38 Atl. 690	341
Mayer v. Johnson, 60 Ark. 50, 28 S. W. 797	48
Meyer v. Johnston, 53 Ala. 237.....	402
Meyer v. Madreperla, 68 N. J. L. 258, 96 Am. St. Rep. 536, 53 Atl. 477	1321, 1324
Meyer v. Phillips, 97 N. Y. 485, 49 Am. Rep. 538	877
Meyer v. Quiggle, 140 Cal. 495, 74 Pac. 40.....	1289
Meyer v. Reimers, 30 Misc. Rep. 307, 63 N. Y. Supp. 681, affirmed 49 App. Div. 638, 63 N. Y. Supp. 1112.....	146
Meyer v. Rosenblatt, 78 Mo. 495	711
Meyer v. Seebald, 11 Abb. Pr., N. S., 326, note.....	187
Meyer v. Thomas, 131 Ala. 111, 30 South. 89	107, 108, 261
Meyer Land Co. v. Pecor (S. D.), 101 N. W. 39.....	1290

Meyers v. N. Y., 58 App. Div. 534, 69 N. Y. Supp. 529.....	620
Meyers v. Smith, 59 Neb. 30, 80 N. W. 273	1103
Meyrowitz Mfg. Co. v. Eccleston, 98 Fed. 437	981
Michael v. St. Louis, 112 Mo. 610, 20 S. W. 666	712, 713
Michigan & Ohio P. Co. v. White, 44 Mich. 25, 5 N. W. 1086.65, 67, 96	
Michigan Railroad Tax Cases, 138 Fed. 223, 244-248	659
Michigan Trust Co. v. City of Red Cloud (Neb.), 92 N. W. 900..	37
Mickel v. Walraven, 92 Iowa, 423, 60 N. W. 633.....	1437, 1440
Mickles v. Rochester City Bank, 11 Paige (N. Y.), 118, 42 Am.	
Dec. 103.....	550, 551
Micklethwait v. Micklethwait, 1 De Gex & J. 504, 524	811, 813
Middlebrook v. Merchants' Bank, 41 Barb. 481, 3 Abb. Dec. 295..	1396
Middlesex Co. v. Lowell, 149 Mass. 509, 21 N. E. 872	913
Middlestadt v. Waupaca etc. Co., 93 Wis. 1, 66 N. W. 713.....	912
Middleton v. Dodswell, 13 Ves. 266.....	165
Midland v. County Board of Gage County, 37 Neb. 582, 56 N. W.	
317	624
Midland Ry. Co. v. Smith, 113 Ind. 233, 15 N. E. 256....	765, 787
Midland Ry. Co. v. Smith, 135 Ind. 348, 35 N. E. 284.....	787
Midland Terminal & Ferry Co. v. Wilson, 28 N. J. Eq. 537.....	1004
Miers v. Zanesville & M. Turnpike Co., 11 Ohio, 273	1413
Mikiska v. Mikiska, 90 Minn. 258, 95 N. W. 910	1148
Milam County etc. Alliance v. Tennent-Stribling Shoe Co. (Tex.	
Civ. App.), 40 S. W. 331	246
Milan Steam Mills v. Hickey, 59 N. H. 241..	833
Milbank v. Revett, 2 Mer. 405.....	151, 153
Milburn v. Phillips, 143 Ind. 93, 52 Am. St. Rep. 403, 42 N. E.	
461	1499
Miles v. Dover Furnace Co., 125 N. Y. 294, 297, 26 N. E. 261....	1317
Miles v. Johnson, 59 Fed. 38	653
Miles v. Miles (Miss.), 37 South, 112	1139
Miles v. New South Bldg. & L. Assn., 95 Fed. 919	299
Miles v. Ray, 100 Ind. 166	688
Miles v. Strong, 62 Conn. 95, 25 Atl. 459	1235
Miles v. Vivian, 79 Fed. 848, 25 C. C. A. 208	39
Miley v. O'Hearn, 13 Ky. Law Rep. 834, 18 S. W. 529.....	891
Milhau v. Sharp, 15 Barb. 193	604, 617
Milhau v. Sharp, 27 N. Y. 611, 84 Am. Dec. 314.....	927
Milhisier v. Willard, 96 Iowa, 327, 65 N. W. 325.....	932
Millard v. Parsell, 57 Neb. 178, 77 N. W. 390.....	1419, 1428
Miller v. American Tobacco Co., 42 Atl. 1117	551
Miller v. Argyle's Exr., 5 Leigh (Va.), 460.....	567
Miller v. Ball, 64 N. Y. 286	1352, 1353, 1354
Miller v. Bear, 3 Paige, 466	1335
Miller v. Brigham, 50 Cal. 615	1530
Miller v. Burket, 132 Ind. 470, 32 N. E. 309.....	821
Miller v. Collyer, 36 Barb. 250	1259
Miller v. Cook, 135 Ill. 190, 25 N. E. 756, 10 L. R. A. 292.....	1402
Miller v. Davidson, 31 Iowa, 435	1245
Miller v. Curry, 124 Ind. 48, 24 N. E. 219, 374.....	1251
Miller v. Davidson, 3 Gilm. 522, 44 Am. Dec. 715.....	1434
Miller v. Dayton, 47 Iowa, 312	1435
Miller v. Dennett, 6 N. H. 109	1198
Miller v. Drake (Wis.), 99 N. W. 1017	1424

Miller v. Edison etc. Co. of N. Y., 33 Misc. Rep. 664, 68 N. Y. Supp. 900.....	915
Miller v. Freeman, 111 Ga. 654, 36 S. E. 961, 51 L. R. A. 504.....	1529
Miller v. Gaskins, Smedes & M. Ch. 524	1086
Miller v. Gittings, 85 Md. 601, 60 Am. St. Rep. 352, 37 Atl. 372	1125, 1126
Miller v. Harris, 9 Baxt. 101	1533
Miller v. Harrison, 32 N. J. Eq. 76	1099
Miller v. Hoeschler, 121 Wis. 558, 99 N. W. 228	831
Miller v. Journeyman Tailors' Assn., 11 Ohio Dec. 45.....	1056
Miller v. Kitchen (Neb.), 103 N. W. 297.....	214
Miller v. Kolb, 47 Ind. 220.....	1143
Miller v. Lanning, 211 Ill. 620, 71 N. E. 1115.....	1187
Miller v. Lorentz, 39 W. Va. 160, 19 S. E. 391	1348
Miller v. Lynch, 149 Pa. St. 460, 24 Atl. 80	848
Miller v. Mackenzie, 29 N. J. Eq. 291.....	375
Miller v. McCarty, 47 Minn. 321, 28 Am. St. Rep. 375, 50 N. W. 235	1403
Miller v. Melone, 11 Okla. 241, 67 Pac. 479, 56 L. R. A. 620....	1428
Miller v. Miller, 13 Pick. 237	1189
Miller v. Miller, 47 Minn. 546, 612, 50 N. W. 612.....	1156
Miller v. Miller, 25 N. J. Eq. 354	1376
Miller v. Millër, Phill. Eq. (N. C.) 85	1504
Miller v. Miller, 22 Misc. Rep. 582, 49 N. Y. Supp. 407.....	1191
Miller v. Miller's Estate (Neb.), 95 N. W. 1010.....	1103
Miller v. Morristown, 47 N. J. Eq. 62, 20 Atl. 61	763
Miller v. Neiman, 27 Ark. 233	1226, 1228, 1233
Miller v. Nelson, 64 Iowa, 458, 20 N. W. 759.....	1370
Miller v. Perkins, 154 Mo. 629, 55 S. W. 874.....	117, 118
Miller v. Peters, 25 Ohio St. 270	1208
Miller v. Rapp, 7 Ind. App. 89, 34 N. E. 125	1527
Miller v. Receiver of the Franklin Bank, 1 Paige, 444.....	369
Miller v. Savage, 60 N. J. Eq. 204, 46 Atl. 632	291, 1144
Miller v. Sherry, 2 Wall. (69 U. S.) 237, 17 L. ed. 827....	1452, 1453
Miller v. Shriner, 86 Ind. 493	265, 270
Miller v. Smith (R. I. 1904), 58 Atl. 634, 66 L. R. A. 473.....	1473
Miller v. Stout, 5 Del. Ch. 259	1504
Miller v. Sullivan, 32 Wash. 115, 72 Pac. 1022.....	630
Miller v. Vollmer, 153 Ind. 26, 53 N. E. 949.....	686
Miller v. Waddingham, 91 Cal. 377, 27 Pac. 750, 13 L. R. A. 680	817, 1388
Miller v. Waldoborough Packing Co., 88 Me. 605, 34 Atl. 527 ..	1131
Miller v. Warmington, 1 Jacob & W. 484.....	1173, 1176, 1180
Miller v. Warner, 42 App. Div. 208, 59 N. Y. Supp. 956.....	521
Miller v. Webster City, 94 Iowa, 162, 62 N. W. 648.....	908
Miller v. Wilkerson, 10 Kan. App. 576, 62 Pac. 253....	1443, 1445
Miller v. Wills, 95 Va. 337, 28 S. E. 337	835
Miller & Lux v. Enterprise etc. Co., 142 Cal. 208, 100 Am. St. Rep. 115, 75 Pac. 770	970
Miller & Lux v. Riekey, 127 Fed. 573	970
Milligan v. Poole, 35 Ind. 64.....	1182, 1202, 1208
Millikan v. Wool, 133 Ind. 51, 32 N. E. 828	690
Mills v. Charleton, 29 Wis. 400, 418	757, 758
Mills v. Chicago, 127 Fed. 731	636
Mills v. Davison, 54 N. J. Eq. 659, 55 Am. St. Rep. 594, 35 Atl. 1072, 35 L. R. A. 113	488

Mills v. Driver (Ark.), 81 S. W. 1058	1147
Mills v. Gleason, 11 Wis. 470, 497, 78 Am. Dec. 721	750
Mills v. Hall, 9 Wend. 315, 24 Am. Dec. 160	929
Mills v. Hyde, 19 Vt. 59, 46 Am. Dec. 177.....	1481, 1483
Mills v. Johnson, 17 Wis. 598, 602	750, 754
Mills v. Provident Life & Trust Co., 100 Fed. 344, 40 C. C. A. 394	1079
Mills v. United States etc. Co., 99 App. Div. 605, 91 N. Y. Supp. 185	1016, 1025, 1029
Millwood v. Earl Thanet, cited in 5 Ves. Jr. 720	1336
Milmoe v. Murphy, 65 N. J. Eq. 767, 56 Atl. 292	1367
Milnor v. Mills, Moseley, 123	1374
Milnes v. Gery, 14 Ves. 100	1275, 1327
Milnor v. N. G. R. Co., 70 U. S. (3 Wall.) 782, 16 L. ed. 1....	931
Miltenberger v. Logansport R. R. Co., 106 U. S. 287, 1 Sup. Ct. 140, 27 L. ed. 117	185, 404, 405, 410, 415, 417, 422
Milwaukee v. Koeffler, 116 U. S. 219, 6 Sup. Ct. 372, 29 L. ed. 612	657
Milwaukee & M. R. R. Co. v. Soutter, 2 Wall. 510, 523, 17 L. ed. 860	108, 248, 249, 435
Milwaukee Iron Co. v. Hubbard, 29 Wis. 51	753, 1228
Milwaukee Mutual Fire Ins. Co. v. The Sentinel Co., 81 Wis. 207, 51 N. W. 440, 15 L. R. A. 627	378, 379
Mims v. McDowell, 4 Ga. 182	1479
Minchin v. Second Nat. Bank, 36 N. J. Eq. 436.....	290
Miner v. Belle Isle Ice Co., 93 Mich. 97, 53 N. W. 218....	210, 213
Miner v. Caples, 23 Or. 303, 31 Pac. 655.....	1174
Miner v. Nichols, 24 R. I. 199, 52 Atl. 893	920
Mingus v. Daugherty, 87 Iowa, 56, 43 Am. St. Rep. 354, 54 N. W. 66	1506, 1510
Minke v. Hopeman, 87 Ill. 450, 29 Am. Rep. 63	883
Minkler v. United States Sheep Co., 4 N. Dak. 507, 62 N. W. 594, 33 L. R. A. 546	189, 1436
Minneapolis & St. L. R. Co. v. Chicago, M. & St. P. R. Co., 116 Iowa, 681, 88 N. W. 1082	1068
Minneapolis & St. L. Ry. Co. v. Minn. etc. R. Co., 61 Minn. 502, 63 N. W. 1035	354
Minneapolis Brewing Co. v. McGillivray, 104 Fed. 258	1084
Minneapolis, St. P. & S. S. M. R. Co. v. Chisholm, 55 Minn. 374, 57 N. W. 63	1333
Minneapolis St. P. & S. S. M. R. Co. v. Dickey County, 11 N. D. 107, 90 N. W. 260	726
Minneapolis Threshing Machine Co. v. Hanrahan, 9 S. D. 520, 70 N. W. 656	1436
Minneapolis Trust Co. v. Veshulst, 74 Ill. App. 350	816
Minnesota v. Northern Securities Co., 123 Fed. 692.....	1054
Minnesota Thresher Mfg. Co. v. Langdon, 44 Minn. 37, 46 N. W. 310	373
Minnis v. Johnson, 1 Duvall, 171	1484
Minor, Ex parte, 11 Ves. 559	1391
Minot v. Mastin, 95 Fed. 734, 37 C. C. A. 234.....	329, 346
Minturn v. Smith, 3 Saw. 142, Fed. Cas. No. 9647	1227, 1235
Misselwitz, In re, 177 Pa. St. 359, 35 Atl. 722.....	139
Mississippi & Mo. R. R. v. Ward, 2 Black, 485, 17 L. ed. 311..	32, 862
Missouri v. Illinois, 180 U. S. 208, 21 Sup. Ct. 331, 45 L. ed. 497..	50

Missouri, K. & T. Ry. Co. v. Board of Commissioners, 9 Kan. App. 350, 58 Pac. 121	694
Missouri, K. & T. Trust Co. v. Richardson, 57 Neb. 617, 78 N. W. 273.....	1424
Missouri Pac. R. Co. v. Love, 61 Kan. 433, 59 Pac. 1072	308
Missouri Pac. R. Co. v. Texas & P. R. Co., 33 Fed. 701	395
Missouri Pac. R. Co. v. Texas etc. R. Co., 31 Fed. 862.....	389
Missouri Pac. R. Co. v. Texas Pac. R. Co., 30 Fed. 169.....	411
Missouri Pac. R. Co. v. Tex. Pac. R. Co., 41 Fed. 311	342
Missouri Pac. R. Co. v. Texas & P. R. Co., 41 Fed. 319.....	395
Missouri R. F. S. & G. R. Co. v. Brickley, 21 Kan. 275.....	1307
Missouri R. F. S. & G. R. Co. v. Morris, 7 Kan. 210.....	694, 696
Mitchell v. Amador etc. Co., 75 Cal. 464, 17 Pac. 246.....	816
Mitchell v. Barnes, 22 Hun, 194	139
Mitchell v. Bunch, 2 Paige, 606, 22 Am. Dec. 669.....	30, 450, 1412
Mitchell v. Colorado Fuel & Iron Co., 117 Fed. 723	483
Mitchell v. Dors, 6 Ves. 147	820, 825
Mitchell v. Great Works etc. Co., 2 Story, 648, Fed. Cas. No. 9662	1518
Mitchell v. Hayne, 2 Sim. & St. 63	80, 81
Mitchell v. Kirby, 18 Ky. Law Rep. 961, 38 S. W. 507.....	1093
Mitchell v. Lasseter, 114 Ga. 275, 40 S. E. 287.....	628
Mitchell v. Lister, 21 Ont. 22	147, 148
Mitchell v. Metropolitan El. R. Co., 56 Hun, 543, 9 N. Y. Supp. 829, 134 N. Y. 11, 31 N. E. 260	780
Mitchell v. Milwaukee, 18 Wis. 92, 97	756
Mitchell v. Northwestern Mfg. & C. Co., 26 Ill. App. 295.....	86
Mitchell v. Oakley, 7 Paige, 68	1088
Mitchell v. Roland, 95 Iowa, 314, 63 N. W. 606	259
Mitchell v. Starbuck, 10 Mass. 11	1193
Mitchell v. Word, 60 Ga. 525	1090
Mitchelson v. Smith, 28 Neb. 583, 26 Am. St. Rep. 357, 44 N. W. 871 ..	1403
Mittigan v. Cooke, 16 Ves. 1	1366
Mitts v. Northern Ry., L. R. 5 Ch. 621	545
Mizner v. School District (Neb.), 96 N. W. 128	574
Moayon v. Moayon, 24 Ky. Law Rep. 1641, 72 S. W. 33	1295
Mobile & M. Ry. Co. v. Alabama M. Ry. Co., 116 Ala. 51, 23 South. 57	773
Mobile & M. Ry. Co. v. Alabama Midland Ry. Co., 123 Ala. 145, 26 South. 324	762, 766
Mobile & O. R. R. Co. v. Moseley, 52 Miss. 127, 137.....	646, 710
Mobile Ins. Co. v. Brame, 95 U. S. 754, 24 L. ed. 580.....	1496
Mobile Ins. Co. v. Columbia & Greenville R. R. Co., 41 S. C. 408, 44 Am. St. Rep. 725, 19 S. E. 858....	1496, 1506
Model Building & L. Assn. v. Patterson, 12 Misc. Rep. 400, 34 N. Y. Supp. 241.....	551
Moe v. Harger (Idaho), 77 Pac. 645.....	969
Moet v. Pickering, L. R. 6 Ch. D. 770	990
Moffatt v. Calvert Co. Commissioners, 97 Md. 266, 54 Atl. 960..	703
Moffet v. Quine, 93 Fed. 347.....	959
Mogan v. Carter, 48 Minn. 501, 51 N. W. 614.....	1235
Mogg v. Mogg, Dick. 670.....	811
Mogul Steamship Co. v. McGregor, [1892] App. Cas. 25, 31....	1039, 1049, 1051

Mogul Steamship Co. v. McGregor, 23 Q. B. D. 598.....	1027
Mohawk & Hudson Co. v. Artcher, 6 Paige, 83.....	830
Mohawk & Hudson R. R. v. Clute, 4 Paige, 384....65, 75, 95, 97, 98, 99	
Mohawk Bridge Co. v. Utica etc. Co., 6 Paige, 554, 563..888, 917, 927	
Moise v. Chapman, 24 Ga. 249.....	367
Mole v. Mansfield, 15 Sim. 41.....	1210
Molineaux v. Raynolds, 54 N. J. Eq. 559, 35 Atl. 536.....	1189
Mollineux v. Powell, 3 P. Wms. 268n (F).....	807
Monarch v. Owensboro (Ky.), 85 S. W. 193.....	1328, 1334
Monarque v. Monarque, 80 N. Y. 326.....	1208
Monighoff v. Sayre, 41 N. J. Eq. 113, 3 Atl. 397.....	1251
Monongahela River Consol. Coal & Coke Co. v. Jutte (Pa.), 59 Atl. 1088.....	524
Monroe Mill Co. v. Menzel, 35 Wash. 487, 102 Am. St. Rep. 905, 77 Pac. 813.....	872
Monsarrat v. Mercantile Trust Co., 109 Fed. 230, 48 C. C. A. 328.....	422
Montacute v. Maxwell 1 P. Wms. 618.....	1361
Montague v. Flockton, L. R. 16 Eq. 189.....	497, 519
Montana Ore etc. Co. v. Boston & M. etc. Co., 22 Mont. 159, 56 Pac. 120.....	837
Montecito Val. Water Co. v. City of Santa Barbara, 144 Cal. 578, 77 Pac. 1113.....	970
Montgomery v. Enslen, 126 Ala. 654, 28 South. 626.....	330, 333
Montgomery v. Gibbs, 40 Iowa, 652.....	1478
Montgomery v. Merrill, 65 Cal. 432, 4 Pac. 414.....	167
Montgomery v. Pac. Coast Land Bureau, 94 Cal. 284, 28 Am. St. Rep. 122, 29 Pac. 640.....	1324
Montgomery v. United States, 36 Fed. 4, 13 Saw. 383.....	29
Montgomery v. Wasem, 116 Ind. 343, 15 N. E. 795, 19 N. E. 184 688, 689, 691	691
Montis v. McQuiston, 107 Iowa, 651, 78 N. W. 704.....	691
Montpelier v. Capital Sav. Bank, 75 Vt. 433, 98 Am. St. Rep. 834, 56 Atl. 89.....	78
Moody v. A. & H. Payne, 2 Johns. Ch. 348.....	1535
Moody v. Peyton, 135 Mo. 482, 58 Am. St. Rep. 604, 36 S. W. 621.....	1092
Moon v. Jennings, 119 Ind. 130, 12 Am. St. Rep. 383, 20 N. E. 748, 21 N. E. 471.....	1485
Moon v. Nat. etc. Co. of Am., 31 Misc. Rep. 631, 66 N. Y. Supp. 33.....	920
Mooney v. New York El. R. Co., 163 N. Y. 242, 57 N. E. 496....	781
Moor v. Black, Cas. t. Talb. 126.....	1167
Moor v. Veazie, 31 Me. 360.....	1002
Moore v. Alabama Nat. Bank, 120 Ala. 89, 23 South. 831.....	1413
Moore v. Atlanta, 70 Ga. 611.....	786
Moore v. Baker, 34 Fed. 1.....	1482
Moore v. Baker, 62 N. J. Eq. 208, 49 Atl. 836.....	1261
Moore v. Bank of British Columbia, 106 Fed. 574.....	107
Moore v. Blagge, 91 Tex. 151, 38 S. W. 979, 41 S. W. 465.....	1216
Moore v. Brooklyn City R. Co., 108 N. Y. 103, 15 N. E. 191....	544
Moore v. Chicago B. & Q. R. Co., 75 Iowa, 263, 39 N. W. 390....	872
Moore v. Chicago, R. I. & P. Ry. Co., 7 Kan. App. 242, 53 Pac. 775.....	533
Moore v. Clear Lake Water Works, 68 Cal. 146, 8 Pac. 816..869, 968	

Moore v. Crawford, 130 U. S. 122, 9 Sup. Ct. 447, 32 L. R. A. 878.....	1384
Moore v. Dick (Mass.), 72 N. E. 967.....	37
Moore v. Galupo, 65 N. J. Eq. 194, 55 Atl. 628.....	1290
Moore v. Halliday, 43 Or. 243, 99 Am. St. Rep. 724, 72 Pac. 801.....	820, 822, 834
Moore v. Jennings, 47 W. Va. 181, 34 S. E. 793.....	825
Moore v. Kleppish, 104 Iowa, 319, 73 N. W. 830.....	1132
Moore v. Lipscombe, 82 Va. 546.....	1096
Moore v. Mercer Wire Co. (N. J. Eq.), 15 Atl. 305.....	286, 303
Moore v. Mercer Wire Co. (N. J. Eq.), 15 Atl. 737.....	286, 302
Moore v. Moore, 103 Ga. 517, 30 S. E. 535.....	36
Moore v. Moore (Tex.), 31 S. W. 532.....	1197
Moore v. Murphy, 89 Hun, 175, 34 N. Y. Supp. 1130.....	509
Moore v. Nickley (C. C. A.), 133 Fed. 289.....	62
Moore v. Omaha Life Assn., 62 Neb. 497, 87 N. W. 321.....	1424
Moore v. Partlow, 84 Ill. App. 119.....	68
Moore v. Potter, 155 N. Y. 481, 63 Am. St. Rep. 692, 50 N. E. 271.....	317, 324
Moore v. Sugg, 112 N. C. 233, 17 S. E. 72.....	725
Moore v. Taylor, 147 Pa. St. 481, 23 Atl. 768.....	737
Moore v. Tuohy, 142 Cal. 342, 75 Pac. 896.....	1275
Moore v. Usher, 7 Sim. 383.....	80, 82
Moore v. Williamson, 10 Rich. Eq. 328, 73 Am. Dec. 93.....	1212
Moore & H. Hardware Co. v. Towers Hardware Co., 87 Ala. 206, 13 Am. St. Rep. 23, 6 South. 41.....	523
Moorer v. Moorer, 84 Ala. 353, 4 South. 234.....	1186
Moore v. Bricklayers' Union (1899), 23 Ohio Wkly. Bul. 48....	1019
Moore v. Clackamas County, 40 Or. 538, 67 Pac. 662....	1240, 1249
Moore v. Townshend, 102 N. Y. 387, 7 N. E. 401.....	1235
Moorman v. Arthur, 90 Va. 455, 18 S. E. 869.....	52
Moorman v. Hoge, 2 Saw. 78, Fed. Cas. No. 9783.....	991
Moran v. Dunphy, 177 Mass. 485, 83 Am. St. Rep. 289, 59 N. E. 125, 52 L. R. A. 115.....	1019
Moran v. Johnston, 26 Gratt. 108.....	250
Moran v. McLarty, 75 N. Y. 25.....	1141
Moran v. Palmer, 13 Mich. 367.....	1228, 1232
Moran v. Sturgis, 154 U. S. 256, 14 Sup. Ct. 1019, 38 L. ed. 981....	324
Moran v. Wayne Circuit Judge, 125 Mich. 6, 83 N. W. 1004....	283
Moran v. Woodyard, 8 B. Mon. 537.....	1082
More v. Massini, 32 Cal. 590.....	837, 846
Moreau v. Du Bellet (Tex. Civ. App.), 27 S. W. 503.....	440
Morenci Copper Co. v. Freer, 127 Fed. 199.....	662
Morenhout v. Higuera, 32 Cal. 293.....	1201
Morey v. Grant, 48 Mich. 326, 12 N. W. 202.....	142, 150
Morgan v. Baxter, 113 Ga. 144, 38 S. E. 411.....	835
Morgan v. Binghampton, 102 N. Y. 500, 7 N. E. 424.....	606, 886
Morgan v. Bucki, 30 Misc. Rep. 245, 61 N. Y. Supp. 929....	354, 363, 364
Morgan v. Fillmore, 18 Abb. Pr. 217.....	86, 95
Morgan v. Glendy, 92 Va. 86, 22 S. E. 854.....	567
Morgan v. Marsack, 2 Mer. 107.....	69, 70
Morgan v. Morgan, 3 Stew. (Ala.) 383, 21 Am. Dec. 638.....	1134
Morgan v. Mueller, 107 Wis. 141, 83 N. W. 313.....	1200
Morgan v. New York & A. R. Co., 10 Paige, 290. 40 Am. Dec. 244.....	305, 306, 552, 1472
Morgan v. New York Nat. B. & L. Assn., 73 Conn. 151, 46 Atl. 877.....	381

Morgan v. Nunn, 84 Fed. 551.....	594, 595
Morgan v. Perhamus, 36 Ohio St. 517, 38 Am. Rep. 607.....	524
Morgan v. Rust, 100 Ga. 346, 28 S. E. 419.....	1422
Morgan v. Smith, 70 N. Y. 537.....	1482
Morgan v. Van Kohnstamm, 60 How. Pr. 161, 9 Daly, 335.....	267
Morgan v. Wetzel County Court, 53 W. Va. 372, 44 S. E. 182....	587
Morgan's La. & T. R. & S. S. Co. v. Farmers' L. & T. Co., 79 Fed. 210, 24 C. C. A. 495.....	422
Morgan's L. & T. R. & S. S. Co. v. Texas Cent. Ry. Co., 137 U. S. 171, 11 Sup. Ct. 61, 34 L. ed. 625.....	422
Morford v. Hamner, 3 Baxt. 391.....	197
Moriarty v. Ashworth, 43 Minn. 1, 19 Am. St. Rep. 203, 44 N. W. 531.....	816
Moriarty v. Kent, 71 Ind. 601.....	357, 363
Moris v. Coleman, 18 Ves. 436.....	524
Morison v. Morison, 4 Mylne & C. 215.....	276
Moritz v. Kaliske, 31 Abb. N. C. 49, 28 N. Y. Supp. 380.....	817
Moritz v. Miller, 87 Ala. 331, 6 South. 269.....	113, 261, 265, 272
Morland v. Cook, L. R. 6 Eq. 252.....	500
Morphett v. Jones, 1 Swanst. 172.....	1348
Morrill v. Manhattan L. I. Co., 183 Ill. 260, 55 N. E. 656, affirm- ing and adopting opinion in 82 Ill. App. 410.....	72, 85, 95
Morrill v. Morrill, 5 N. H. 134.....	1187
Morrill v. Morrill, 5 N. H. 329.....	1214
Morrill v. Noyes, 56 Me. 458, 96 Am. Dec. 486.....	286, 303
Morris v. Barnwell, 60 Ga. 147.....	1090
Morris v. Bean, 123 Fed. 618.....	859
Morris v. Board of Pilot Commissioners, 77 Del. Ch. 136, 30 Atl. 667.....	574
Morris v. Branchaud, 52 Wis. 187, 8 N. W. 883.....	168
Morris v. Cain's Exrs., 34 La. Ann. 657, 35 La. Ann. 759.....	65
Morris v. Carnahan (Tex. Civ. App.), 31 S. W. 436.....	1129
Morris v. Colman, 18 Ves. 436.....	519
Morris v. Cummings, 91 Tex. 618, 45 S. W. 383.....	741
Morris v. Graham, 16 Wash. 343, 58 Am. St. Rep. 33, 47 Pac. 752	931, 973
Morris v. Hoyt, 11 Mich. 9, 18.....	1333
Morris v. Knight, 14 Pa. Super. Ct. 324.....	804
Morris v. Lake, 89 Va. 513, 16 S. E. 663.....	110
Morris v. Merrell, 44 Neb. 423, 62 N. W. 865.....	715, 718
Morris v. Morris, 9 Heisk. (Tenn.) 814.....	1476
Morris v. Morris, 2 De Gex & J. 323.....	815
Morris v. Morris, 15 Sim. 505.....	813
Morris v. Remington, 1 Pars. Eq. Cas. 389.....	32
Morris v. Stephenson, 7 Ves. 474.....	1273
Morris v. Tuscaloosa Mfg. Co., 83 Ala. 565, 3 South. 690....	500, 504
Morris v. Willard, 84 N. C. 293.....	488
Morris & C. D. Co. v. Greenville etc. Co. (N. J.), 46 Atl. 638..	871, 930
Morris & E. R. Co. v. Hoboken & M. R. Co. (N. J. Eq.), 59 Atl. 332.....	769
Morris & E. R. Co. v. Newark Pass. Ry. Co., 51 N. J. Eq. 379, 29 Atl. 184.....	770
Morris & E. R. Co. v. Prudden, 20 N. J. Eq. 530.....	907
Morris Canal etc. Co. v. Jersey City, 12 N. J. Eq. 227.....	1228
Morrison v. Buckner, Hempst. 442, Fed. Cas. No. 9844.....	173
Morrison v. Hart, 5 Ky. (2 Bibb) 4, 4 Am. Dec. 663.....	1076
Morrison v. Herriek, 130 Ill. 631, 20 N. E. 537.....	1350, 1371
Morrison v. Jacoby, 114 Ind. 84, 14 N. E. 546, 15 N. E. 806.....	689

Morrison v. Latimer, 51 Ga. 519.....	872
Morrison v. Marker, 93 Fed. 692.....	27
Morrison v. Moet, 9 Hare, 241.....	489
Morrison v. Morrison, 122 N. C. 598, 29 S. E. 901.....	818
Morrison v. Poyntz, 7 Dana, 307, 32 Am. Dec. 92.....	1488
Morris St. Baptist Church v. Dart, 67 S. C. 338, 100 Am. St. Rep. 727, 45 S. E. 753.....	561
Morrow etc. Mfg. Co. v. New England Shoe Co., 57 Fed. 685, 18 U. S. App. 256, 6 C. C. A. 508, 24 L. R. A. 425.....	1424
Morse v. Morse, 85 N. Y. 53.....	1191
Morse v. Omaha (Neb.), 93 N. W. 734.....	718
Morse v. Thorsell, 78 Ill. 600.....	1381
Mortlock v. Buller, 10 Ves. 292, 305, 306.....	1257, 1329
Morton v. Carlin, 51 Neb. 202, 70 N. W. 966.....	715
Morton v. Morris, 27 Tex. Civ. App. 262, 66 S. W. 94.....	1239
Morton v. Stone Harbor Imp. Co. (N. J.), 44 Atl. 875.....	381
Morton C. Hunter Stone Co. v. Woodard, 152 Ind. 474, 53 N. E. 947.....	686
Mosby v. Gisborn, 17 Utah, 257, 54 Pac. 121.....	1101
Moseby v. Burrow, 52 Tex. 402.....	440
Moses v. Johnson, 88 Ala. 517, 16 Am. St. Rep. 58, 7 South. 146.....	816, 817, 1387
Moses v. Pittsburgh, Ft. Wayne & C. R. Co., 21 Ill. 516.....	769
Moses v. Sanford, 2 Lea, 655.....	1086
Mosher v. Bruhn, 15 Wash. 332, 46 Pac. 397.....	66
Mosher v. Mosher, 32 Me. 414.....	1192
Mosher v. Supreme Sitzings of O. T. H., 88 Hun, 394, 34 N. Y. Supp. 816.....	294, 307
Moss v. Barton, L. R. 1 Eq. 474.....	1258
Moss v. Board of Education, 58 Ohio St. 354, 50 N. E. 921....	727
Moss Cigar Co., In re, 50 La. Ann. 789, 23 South. 544.....	205, 208, 261, 265
Mostyn v. Atherton, [1899] 2 Ch. 360.....	869, 970
Moton v. Hull, 77 Tex. 80, 13 S. W. 849, 8 L. R. A. 722.....	1127
Mott v. Dunn, 10 How. Pr. 225.....	200
Mott v. Pennsylvania R. Co., 30 Pa. St. (6 Casey) 9, 72 Am. Dec. 664.....	581, 584
Mott v. Underwood, 148 N. Y. 463, 51 Am. St. Rep. 711, 42 N. E. 1048.....	818
Motz v. City of Detroit, 18 Mich. 495.....	706, 707
Moudry v. Witzka, 89 Minn. 300, 94 N. W. 885.....	1104
Moulton v. Harris, 94 Cal. 420, 29 Pac. 706.....	1351
Moulton v. Reid, 54 Ala. 320.....	589
Moundsville v. Ohio etc. Co., 37 W. Va. 92, 16 S. E. 514, 20 L. R. A. 161.....	914
Mt. Clemens v. Mt. Clemens etc. Co., 127 Mich. 115, 86 N. W. 537, 8 Det. Leg. N. 282.....	913, 930
Mount Holly etc. Tp. Co. v. Ferree, 17 N. J. Eq. 117.....	65, 81, 83, 86, 96
Mountjoy v. Bank's Exrs., 6 Munf. (Va.) 387.....	1475
Mt. Rosa Min. etc. Co. v. Palmer, 26 Colo. 56, 77 Am. St. Rep. 245, 56 Pac. 176, 50 L. R. A. 289.....	1247
Movius v. Lee, 30 Fed. 298.....	374
Moxhay v. Inderwick, 1 De Gex & S. 708.....	504
Moxon v. Bright, L. R. 4 Ch. 292.....	1520, 1521
Moyers v. Coiner, 22 Fla. 422.....	261, 266, 268, 271
Mozley v. Alston, 1 Phill. Ch. 790.....	551
Mudgett v. Clay, 5 Wash. 103, 31 Pac. 424.....	1335

Mudsill Mining Co. v. Watrous, 61 Fed. 163, 9 C. C. A. 415.....	34
Muehlfeld, In re, 16 App. Div. 401, 45 N. Y. Supp. 16.....	301
Muehlfeld & Haynes Piano Co., In re, 12 App. Div. 492, 42 N. Y. Supp. 802, 26 Civ. Pr. R. 90.....	291, 294, 295
Mueller v. Eau Claire County, 108 Wis. 304, 84 N. W. 430.....	626
Muhler v. Hedekin, 119 Ind. 481, 20 N. E. 700.....	594
Muhler v. New York & H. R. Co., 197 U. S. 455, 25 Sup. Ct. 522.....	779
Mulcahey v. Strauss, 151 Ill. 70, 37 N. E. 702.....	335, 336
Muldoon v. Trehwitt (Tenn.), 38 S. W. 109.....	1187
Mullen v. City of Tacoma, 16 Wash. 82, 47 Pac. 215.....	590
Mullens v. Big Creek etc. Co. (Tenn. Ch. App.), 35 S. W. 439.....	1294, 1333, 1335
Muller v. Dows, 94 U. S. 444, 24 L. ed. 207.....	30, 31
Muller v. Loeb, 64 Barb. 454.....	352
Mul'et v. Halfpenny, Prec. in Ch. 404.....	1362
Mulligan v. Baring, 3 Daly, 75.....	1235
Mullineux v. Mullineux, Toth. 39.....	1172
Mullis v. Nichols, 105 Ga. 465, 30 S. E. 654.....	523
Mulock v. Wilson, 19 Colo. 296, 35 Pac. 532.....	1233
Mulqueeny v. Shaw, 50 La. Ann. 1060, 23 South. 915.....	215
Mulrooney v. Obeare, 171 Mo. 613, 71 S. W. 1019.....	532
Multnomah St. R. Co. v. Harris, 13 Or. 198, 9 Pac. 402....	1412, 1434
Mulvaney v. Kennedy, 26 Pa. St. 44.....	964
Muncey v. Joest, 74 Ind. 409.....	690, 691
Muncie Nat. Gas Co. v. City of Muncie, 160 Ind. 97, 66 N. E. 436.....	533
Mundy v. Jolliffe, 5 Mylne & C. 167.....	1350
Mundy v. Mundy, 2 Ves. 122, 128.....	1167, 1168, 1182
Municipal Inv. Co. v. Gardiner, 62 Fed. 954.....	29
Munn v. Worrall, 16 Barb. 221.....	1078
Munns v. Isle of Wight R. Co., L. R. 5 Ch. 414.....	198
Munro v. Callahan, 55 Neb. 75, 70 Am. St. Rep. 366, 75 N. W. 151.....	1103
Munson v. Miller, 66 Ill. 380.....	676
Munson v. Munson, 28 Conn. 582, 78 Am. Dec. 693...1226, 1228, 1232	
Munyon v. Filmore (Ind. Ter.), 76 S. W. 257.....	843
Murch v. Smith Mfg. Co., 47 N. J. Eq. 193, 20 Atl. 213.....	204
Murdfeldt v. New York etc. R. R., 102 N. Y. 702, 7 N. E. 404...1317	
Murdock v. Walker, 152 Pa. St. 595, 34 Am. St. Rep. 678, 25 Atl. 492.....	1014, 1025, 1038
Murjahn v. Hall, 119 Fed. 186.....	531
Murphy v. Harker, 115 Ga. 77, 41 S. E. 585.....	936, 940, 960
Murphy v. Clark, 9 Miss. (1 Smedes & M.) 221.....	1264
Murphy v. Marland, 8 Cush. 575.....	1382
Murphy v. East Portland, 42 Fed. 308.....	602
Murphy v. Johnson, 107 Tenn. 552, 64 S. W. 894.....	1110
Murphy v. Lincoln, 63 Vt. 278, 22 Atl. 418.....	836
Murphy v. Sears, 11 Or. 127, 4 Pac. 471.....	1248
Murphy v. Smith, 86 Mo. 333.....	1095
Murphy v. Wilmington, 6 Houst. 108, 139, 140, 22 Am. St. Rep. 345.....	673, 674
Murray v. American Surety Co., 70 Fed. 341, 17 C. C. A. 138, affirming 59 Fed. 345, and 61 Fed. 273.....	237
Murray v. Evans (Ariz.), 64 Pac. 412.....	665
Murray v. Murray, 115 Cal. 266, 56 Am. St. Rep. 97. 47 Pac. 37, 37 L. R. A. 626.....	258

Murray v. Nickerson, 90 Minn. 197, 95 N. W. 898.....	1366
Murray v. Superior Court, 129 Cal. 628, 62 Pac. 191...205, 208, 209	
Murray v. Toland, 3 Johns. Ch. 569.....	1087
Murrell v. Goodyear, 1 De Gex, F. & J. 432.....	1296, 1329
Murtey v. Allen, 71 Vt. 377, 76 Am. St. Rep. 779, 45 Atl. 752..	357, 441
Musch v. Burkhart, 83 Iowa, 301, 32 Am. St. Rep. 305, 48 N. W. 1025, 12 L. R. A. 484.....	824
Musgrave v. Dickson, 172 Pa. St. 629, 51 Am. St. Rep. 765, 33 Atl. 705.....	1506
Musgrove v. Gray, 123 Ala. 376, 82 Am. St. Rep. 124, 26 South. 643.....	301
Musselman, Appeal of, 65 Pa. St. 480, 71 Pa. St. 465...1296, 1329, 1330	
Musselman v. Marquis, 1 Bush (Ky.), 463, 89 Am. Dec. 637..	832, 833
Mussey v. Sanborn, 15 Mass. 155.....	1196
Mutual Ben. Life Ins. Co. v. Supervisors, 2 Abb. Pr., N. S., 233.....	720, 722
Mutual Deposit Co. v. Central Mutual Deposit Co., 112 Ky. 937, 23 Ky. Law Rep. 2247, 66 S. W. 1032.....	996
Mutual Electric Light Co. v. Ashworth, 118 Cal. 1, 50 Pac. 10..	606
Mutual Life Ins. Co. v. Blair, 130 Fed. 971.....	1154
Mutual Life Ins. Co. v. Boyle, 82 Fed. 705.....	575
Mutual Life Ins. Co. v. Pearson, 114 Fed. 395, 397.....	1154, 1155
Mutual Reserve Fund Life Assn. v. Phelps, 103 Fed. 515.....	1112
Muzzarelli v. Hulshizer, 163 Pa. St. 643, 30 Atl. 291.....	504
Myers v. Estell, 48 Miss. 372.....	167, 169
Myers v. Hawkins, 67 Ark. 413, 56 S. W. 640.....	826
Myers v. Kalamazoo Buggy Co., 54 Mich. 215, 52 Am. Rep. 811, 19 N. W. 961, 20 N. W. 545.....	527
Myers v. League, 62 Fed. 654, 659, 10 C. C. A. 571.....	1334, 1338
Myers v. Silljacks, 58 Md. 319.....	1258
Myers v. Steele Mach. Co. (N. J. Eq.), 57 Atl. 1080.....	530
Mylin v. King, 139 Ala. 319, 35 South. 998.....	1182
My Maryland Lodge v. Adt (Md.), 59 Atl. 721.....	1030, 1039
Myrick v. City of La Crosse, 17 Wis. 442.....	756
Myton v. Davenport, 51 Iowa, 583, 2 N. W. 462.....	183

N

Naddo v. Bardon, 51 Fed. 493, 2 C. C. A. 335, 4 U. S. App. 642.....	48, 55, 61, 62
Nagel v. Lindell Ry. Co., 167 Mo. 89, 66 S. W. 1090.....	770
Nalle v. Virginia Midland R. Co., 88 Va. 948, 14 S. E. 759.....	1162
Nally v. Reading, 107 Mo. 350, 17 S. W. 978.....	1347
Nance v. Busby, 91 Tenn. 303, 18 S. W. 874, 15 L. R. A. 801.....	554, 558, 562
Nantahala Marble & Tale Co. v. Thomas, 76 Fed. 59.....	44
Nantes v. Corrock, 9 Ves. Jr. 188, 189.....	1415
Nash v. Baker, 37 Neb. 713, 56 N. W. 376.....	624
Nash v. Church, 10 Wis. 311, 78 Am. Dec. 678.....	1208
Nash v. Meggett, 89 Wis. 486, 61 N. W. 283.....	178, 181
Nash v. Ingalls, 101 Fed. 645, 41 C. C. A. 545 (affirming 79 Fed. 510).....	36, 56
Nash v. Simpson, 78 Me. 142, 3 Atl. 53.....	1182, 1213
Nash v. Smith, 6 Conn. 421.....	96
Nashville & St. L. Ry. Co. v. McConnell, 82 Fed. 65.....	793
Nashville, C. & St. L. R. Co. v. City of Attalla, 118 Ala. 262, 24 South. 450.....	665
Nashville, C. & St. L. R. Co. v. Mattingly, 101 Ky. 219, 40 S. W. 673.....	1436

TABLE OF CASES CITED.

1707

Nashville C. & St. L. R. Co. v. McConnell, 82 Fed. 65.....	1012, 1063
Nashville C. & St. L. R. Co. v. Taylor, 86 Fed. 168.....	645, 659
Nashville, M. & S. Turnpike Co. v. Davidson County, 106 Tenn. 258, 61 S. W. 68.....	1003
Nashville Trust Co. v. Weaver, 102 Tenn. 66, 50 S. W. 763....	1136
Nassau Bank v. Yandes, 44 Hun, 55.....	68
Nassau Electric R. Co. v. White, 12 Misc. Rep. 631, 34 N. Y. Supp. 960.....	577
Natalie Anthracite Coal Co. v. Ryon, 188 Pa. St. 138, 41 Atl. 462, 43 Wkly. Not. Cas. 265.....	1132
Nathan v. Nathan, 166 Mass. 294, 44 N. E. 221.....	1152, 1154
Nathans v. Steinmeyer, 57 S. C. 386, 35 S. E. 733.....	172
National Bank v. Colby, 21 Wall. 609, 22 L. ed. 687.....	379, 381
National Bank v. Virginia Textile Co. (Va.), 51 S. E. 155.....	410
National Bank of Arizona v. Long (Ariz.), 57 Pac. 639.....	665
National Bank of Augusta v. Augusta etc. Co., 99 Ga. 286, 25 S. E. 686.....	68, 95
National Bank of Augusta v. Carolina, K. & W. R. Co., 63 Fed. 25.....	416, 418
National Bank of Augusta v. Richmond Factory, 91 Ga. 284, 18 S. E. 160.....	237
National Bank of Chattanooga v. Mayor & Aldermen of Chatta- nooga, 8 Heisk. 816.....	740
National Bank of Newberry v. Kinard, 28 S. C. 101, 112, 5 S. E. 464.....	1436
National Bank of the Republic v. Hobbs, 118 Fed. 627.....	189
National Bank of Unionville v. Staats, 155 Mo. 55, 55 S. W. 626..	711
National Biscuit Co. v. Swick, 121 Fed. 1007.....	990
National Carriage Mfg. Co. v. Story etc. Co., 111 Cal. 531, 539, 44 Pac. 157.....	1460
National Cash-Register Co. v. Navy Cash-Register Co., 99 Fed. 565.....	984
National Docks R. Co. v. Central Ry. Co., 32 N. J. Eq. 755.....	552, 768, 846
National Fertilizer Co. v. Lambert, 48 Fed. 458.....	530
National Fire Ins. Co. v. Broadbent, 77 Minn. 175, 79 N. W. 676.....	170, 171
National Gum & M. Co. v. Braendly, 27 App. Div. 219, 51 N. Y. Supp. 93.....	531
National Life Ins. Co. v. Pingrey, 141 Mass. 411.....	76
National Park Bank v. Goddard, 65 Hun, 626, 20 N. Y. Supp. 526, 984.....	382
National Park Bank v. Lanahan, 60 Md. 477.....	65, 80, 81
National Phonograph Co. v. Schlegel, 117 Fed. 624.....	528
National Protective Assn. v. Cumming, 170 N. Y. 315, 88 Am. St. Rep. 648, 63 N. E. 369, 58 L. R. A. 135.....	1014, 1016, 1017, 1018, 1024
National Protective Assn. v. Cumming, 53 App. Div. 227, 65 N. Y. Supp. 946.....	1014, 1016
National Sav. Bank v. Cable, 73 Conn. 568, 48 Atl. 428.....	66
National Surety Co. v. State Bank, 120 Fed. 593, 56 C. C. A. 657..	1108
National Tel. News Co. v. Western Union Tel. Co., 119 Fed. 294, 56 C. C. A. 198, 60 L. R. A. 805.....	987
National Tradesmen's Bank v. Wetmore, 124 N. Y. 248, 26 N. E. 548.....	1429
National Trust Co. v. Miller, 33 N. J. Eq. 155.....	439
National Tube Works Co. v. Ballou, 146 U. S. 523, 13 Sup. Ct. 165, 36 L. ed. 1070.....	1432, 1433, 1457, 1470

National Union Bank v. Riger, 38 App. Div. 123, 56 N. Y. Supp. 545.....	191
National Val. Bank v. Hancock, 100 Va. 101, 93 Am. St. Rep. 933, 40 S. E. 611.....	1441
Naumburg v. Hyatt, 24 Fed. 898.....	286, 307
Navulshaw v. Brownrigg, 1 Sim., N. S., 573, 2 De Gex, M. & G. 441.....	1520
Naylor v. Carson (N. J.), 49 Atl. 529.....	958, 960
Naylor v. Sidener, 106 Ind. 179, 6 N. E. 345.....	108
Neaf v. Palmer, 103 Ky. 496, 45 S. W. 506, 41 L. R. A. 219.....	794
Neagle, In re, 135 U. S. 1, 10 Sup. Ct. 658, 34 L. ed. 55.....	579
Neal v. Gregory, 19 Fla. 356.....	1354
Neal v. Keel's Exrs., 20 Ky. (4 T. B. Mon.) 162.....	1514, 1527
Neal v. Suber, 56 S. C. 298, 33 S. E. 463.....	1186, 1188
Neale v. Cripps, 4 Kay & J. 472.....	826, 838, 843
Neale v. Neales, 9 Wall. 1, 19 L. ed. 590.....	1360
Neall v. Hill, 16 Cal. 145, 76 Am. Dec. 508.....	212
Neblett v. Macfarland, 92 U. S. 101, 23 L. ed. 471.....	1162, 1163, 1164
Nebraska Loan & Trust Co. v. Nine, 27 Neb. 507, 20 Am. St. Rep. 686, 43 N. W. 348.....	998
Nebraska Tel. Co. v. Cornell, 58 Neb. 823, 80 N. W. 43.....	578
Nebraska Telephone Co. v. Fremont (Neb.), 99 N. W. 811.....	637
Needham v. New York etc. R., 152 Mass. 61, 25 N. E. 20.....	923
Neel v. Neel, 80 Va. 584.....	1351
Neeiland v. State, 39 Kan. 154, 18 Pac. 165.....	590
Neely v. Jones, 16 W. Va. 625, 37 Am. Rep. 794.....	1478, 1502
Negaunee etc. Co. v. Ironcliffs Co. (Mich.), 96 N. W. 468.....	837
Negley v. Hagerstown etc. Co., 86 Md. 692, 39 Atl. 506.....	1157
Negley v. Henderson Bridge Co., 107 Ky. 414, 54 S. W. 171.....	698
Neilson v. Fry, 16 Ohio St. 552, 91 Am. Dec. 110.....	1502
Neiman v. Butler, 46 N. Y. St. Rep. 928, 19 N. Y. Supp. 403....	515
Nelson v. Barter, 2 Hem. & M. 334, 33 L. J. Ch. 705, 10 Jur., N. S., 832.....	67, 92
Nelson v. Goree's Admr., 34 Ala. 565.....	101
Nelson v. Hubbard, 96 Ala. 245, 11 South. 428.....	381
Nelson v. Kelly, 91 Ala. 569, 8 South. 690.....	1320
Nelson v. Milligan, 151 Ill. 462, 38 N. W. 239.....	864
Nelson v. Munch, 28 Minn. 314, 9 N. W. 863.....	1505, 1506
Nelson v. Nugent, 62 Minn. 203, 64 N. W. 392.....	364
Nelson v. Rockwell, 14 Ill. 375.....	1097, 1117
Nelson v. Shelby Mfg. & Imp. Co., 96 Ala. 515, 38 Am. St. Rep. 116, 11 South. 695.....	1353
Nelson v. State Board of Health, 108 Ky. 769, 22 Ky. Law Rep. 438, 57 S. W. 501, 50 L. R. A. 383.....	575
Nelson v. Triplett, 99 Va. 421, 39 S. E. 150.....	46
Neppach v. Jones, 20 Or. 491, 23 Am. St. Rep. 145, 26 Pac. 569, 849.....	1439
Nerlien v. Village of Brooten (Minn.), 102 N. W. 867.....	630
Nesbit v. St. Patrick's Church, 9 N. J. Eq. 76.....	1518
Nesbit v. Wood, 22 Ky. Law Rep. 127, 56 S. W. 714.....	184, 185
Nesbitt v. Turrentine, 83 N. C. 535.....	156
Neshkoro v. Nest, 85 Wis. 126, 55 N. W. 176.....	930
Nettleton v. Ramsey County Land & Loan Co., 54 Minn. 395, 40 Am. St. Rep. 342, 56 N. W. 128....	1495, 1503, 1510
Nevada Sierra v. Home Oil Co., 98 Fed. 673.....	158
Nevill v. Clifford, 55 Wis. 161, 12 N. W. 419.....	629
Nevitt v. Gillespie, 1 How. (Miss.) 108, 26 Am. Dec. 696. .811, 841, 843	

New Albany v. White, 100 Ind. 206.....	764
New Albany Waterworks v. Louisville Banking Co., 122 Fed. 776, 58 C. C. A. 576.....	214, 541
Newark Aqueduct Board v. Passaic, 46 N. J. Eq. 552, 20 Atl. 54, 22 Atl. 55.....	483
Newark Coal Co. v. Spangler, 54 N. J. Eq. 354, 34 Atl. 932.....	526
Newberger v. Wells, 51 W. Va. 624, 42 S. E. 625.....	36
Newbery v. James, 2 Mer. 446.....	489, 1274
New Birmingham Iron etc. Co. v. Blevins, 12 Tex. Civ. App. 410, 34 S. W. 828.....	246
Newburgh & C. Turnpike Road v. Miller, 5 Johns. Ch. 101..1001, 1002	
Newcastle v. Haywood, 67 N. H. 178, 37 Atl. 1040.....	927, 928
Newcastle v. Raney, 130 Pa. St. 546, 18 Atl. 1066, 6 L. R. A. 737..	881
Newcomb v. Gibson, 127 Mass. 396.....	1489
Newcomb v. Horton, 18 Wis. 566.....	754
Newcomb v. Newcomb, 12 N. Y. 603.....	1192
Newcome v. Crews, 98 Ky. 339, 32 S. W. 947.....	871, 931
Newdigate v. Jacobs, 9 Dana, 18.....	1452
Newell v. Fisher, 24 Miss. 392.....	357
Newell v. Sass, 142 Ill. 104, 31 N. E. 176.....	939
Newell v. Wheeler, 48 N. Y. 486.....	1228
New England Awl etc. Co. v. M. A. & N. Co., 168 Mass. 154, 60 Am. St. Rep. 377, 46 N. E. 386.....	994
New England Mort. Sec. Co. v. Powell, 97 Ala. 483, 12 South. 55..	565
New England Mut. L. Co. v. Capehart, 63 Minn. 120, 65 N. W. 258.....	1227
New England Mut. L. I. Co. v. Keller, 7 Civ. Proc. Rep. (N. Y.) 109.....	101
New England Mut. L. I. Co. v. Odell, 50 Hun, 279, 2 N. Y. Supp. 873.....	82
New England Trust Co. v. Abbott, 162 Mass. 148, 154, 38 N. E. 432, 27 L. R. A. 271.....	1269
New Foundland R. R. Construction Co. v. Schack, 40 N. J. Eq. 222, 1 Atl. 23.....	234, 242
Newhall v. Buckingham, 14 Ill. 405.....	1535
Newhall v. Kastens, 70 Ill. 156.....	67, 70, 74, 99
Newhall v. McCabe Hanger Mfg. Co., 125 Fed. 919, 60 C. C. A. 629.....	983
Newhall v. Murphy (Ky. App.), 78 S. W. 482.....	1010
New Haven Clock Co. v. Kochersperger, 175 Ill. 383, 51 N. E. 629.....	683, 683
New Haven Water Co. v. Borough of Wallingford, 72 Conn. 293, 44 Atl. 235.....	968
New Home etc. Machine Co. v. Fletcher, 44 Ark. 139.....	1084
New Jersey & N. C. L. & L. Co. v. Gardner etc. Co., 113 Fed. 395.	840
New Jersey Title G. & T. Co. v. Cone, 64 N. J. Eq. 45, 53 Atl. 97.	185
Newland v. First Baptist Church (Mich.), 100 N. W. 612.....	1301
Newlin v. Prevo, 81 Ill. App. 75.....	858
New London v. Brainard, 22 Conn. 553.....	600
Newlove v. Pennock, 123 Mich. 260, 82 N. W. 54.....	1441
Newman v. Commercial Nat. Bank, 156 Ill. 530, 41 N. E. 156 (affirming 55 Ill. App. 534).....	72, 84
Newman v. Duane, 89 Cal. 597, 27 Pac. 66.....	1244
Newman v. Metropolitan El. R. Co., 118 N. Y. 618, 23 N. E. 901, 7 L. R. A. 289.....	781
Newman v. Nellis, 97 N. Y. 285.....	946

Newman v. Rogers, 4 Bro. C. C. 391, 393.....	1335
Newman v. Schueck, 58 Ill. App. 328.....	1078
Newman v. Taylor, 69 Miss. 670, 13 South. 831.....	1120
New Memphis Gas & Light Co. v. City of Memphis, 72 Fed. 952..	637
Newmeyer v. Missouri etc. Ry. Co., 52 Mo., 81, 14 Am. Rep. 394	
.....600, 610, 614, 615, 622	
New Orleans v. Fisher, 91 Fed. 574, 34 C. C. A. 15.....	1422
New Orleans v. Morris, 3 Woods, 103, Fed. Cas. No. 10,182....	1075
New Orleans v. Paine, 147 U. S. 261, 13 Sup. Ct. 303, 37 L. ed.	
162.....	583
New Orleans v. Warner, 175 U. S. 120, 130, 20 Sup. Ct. 44, 44 L.	
ed. 96.....	55
New Orleans City & L. R. Co. v. State Board of Arbitration, 47	
La. Ann. 874, 17 South. 418.....	578, 585
New Orleans Gas-Light Co. v. Louisiana Light etc. Co., 115 U. S.	
650, 6 Sup. Ct. 252, 29 L. ed. 516.....	1002
New Orleans, M. & C. R. R. Co. v. Dunn, 51 Ala. 128.....	609, 616
New Orleans Waterworks Co. v. City of New Orleans, 164 U. S.	
471, 17 Sup. Ct. 161, 41 L. ed. 518.....	602
Newport v. Newport & C. Bridge Co., 90 Ky. 193, 13 S. W. 720,	
8 L. R. A. 484.....	632
Newport Waterworks v. Sisson, 18 R. I. 411, 28 Atl. 336.....	1379
New Rice Milling Co. v. Romero, 105 La. Ann. 439, 29 South. 876.	920
New Rochelle v. Lang, 75 Hun, 608, 27 N. Y. Supp. 600.....	794, 896
Newton v. Levis, 79 Fed. 715, 25 C. C. A. 561, 49 U. S. App. 266	
.....482, 484	
Newton v. Bronson, 13 N. Y. 587, 67 Am. Dec. 89.....	29
Newton v. Brown, 134 N. C. 439, 46 S. E. 994.....	826
Newton Bank v. Hull, 10 Allen, 145.....	1195
New York v. Jones, 24 Misc. Rep. 490, 53 N. Y. Supp. 836.....	919
New York v. Pine, 185 U. S. 93, 22 Sup. Ct. 592, 46 L. ed. 820	
.....787, 789, 860	
New York v. Starin, 106 N. Y. 1, 12 N. E. 631.....	1002
New York & H. R. Co. v. Haws, 56 N. Y. 175.....	1087
New York & New Haven R. R. Co. v. Schuyler, 17 N. Y. 592....	1229
New York & W. U. Tel. Co. v. Jewett, 115 N. Y. 166, 21 N. E.	
1036.....	350, 436
New York Bank Note Co. v. Hamilton Bank Note Co., 83 Hun,	
593, 31 N. Y. Supp. 1060.....	513
New York Cement Co. v. Consolidated R. Cement Co., 178 N. Y.	
167, 70 N. E. 451.....	1062
New York Cent. & H. R. R. Co. v. City of Rochester, 127 N. Y.	
591, 28 N. E. 416.....	891
New York Cent. & H. R. R. Co. v. Haffen, 90 Hun, 260, 35 N.	
Y. Supp. 806.....	578
New York Central & H. R. R. Co. v. Maine, 71 Hun, 417, 24 N.	
Y. Supp. 962.....	620
New York Cent. & H. R. R. Co. v. Warren, 31 Misc. Rep. 571, 64	
N. Y. Supp. 781.....	832
New York Chemical Co. v. Halleck (Com. P. S. T.), 15 N. Y.	
Supp. 517.....	499
New York etc. Co. v. Scovill, 71 Conn. 136, 71 Am. St. Rep. 159,	
41 Atl. 246, 42 L. R. A. 157.....	832, 837
New York Filter Co. v. Schwarzwald, 58 Fed. 577.....	1057
New York Filter Mfg. Co. v. Jackson, 91 Fed. 422.....	982
New York Filter Mfg. Co. v. Loomis-Manning Filter Co., 91 Fed.	
421.....	982

New York Guaranty etc. Co. v. Tacoma R. & M. Co., 83 Fed. 365, 27 C. C. A. 550.....	416, 419
New York, L. E. & W. Ry. Co. v. Wenger, 9 Ohio Dec. 817, 17 Week. Law Bul. 306.....	1027
New York Life Ins. Co. v. Weaver's Admr., 114 Ky. 295, 24 Ky. Law Rep. 1086, 70 S. W. 628.....	45, 1161
New York P. & O. R. v. New York L. E. etc. R. Co., 58 Fed. 268.....	422, 452
New York Phonograph Co. v. Jones, 123 Fed. 197.....	1039
New York Printing & Dyeing Establishment v. Fitch, 1 Paige, 97.....	483, 484, 840
New York Security & T. Co. v. Saratoga G. & E. L. Co., 159 N. Y. 137, 45 L. R. A. 132, 53 N. E. 758.....	326
Nibert v. Baghurst, 47 N. J. Eq. 201, 20 Atl. 252....	1348, 1349, 1354
Nicely v. Boyles, 23 Tenn. (4 Humph.) 177, 40 Am. Dec. 638....	1200
Nichol v. Stockdale, 3 Swanst. 687.....	975
Nicholas v. Purzell, 21 Iowa, 266, 89 Am. Dec. 572.....	1192
Nichols v. Nichols, 28 Vt. 230, 67 Am. Dec. 699.....	1194
Nichols v. Perry Patent Arm Co., 11 N. J. Eq. 126.....	242
Nicholson v. Condon, 71 Md. 620, 18 Atl. 812.....	1325
Nicholson v. Rose, 4 De Gex & J. 10.....	513
Nicholson v. Stephens, 47 Ind. 185.....	1115
Nickolson v. Knowles, 5 Madd. 47.....	77, 87
Nicodemus v. Hull, 93 Md. 364, 48 Atl. 1094.....	702
Nicodemus v. Nicodemus, 41 Md. 529.....	830
Nicoll v. Spowers, 105 N. Y. 1, 11 N. E. 138.....	299
Nicolls v. Wentworth, 100 N. Y. 455, 3 N. E. 482.....	947
Nidever v. Ayres, 83 Cal. 39, 23 Pac. 192.....	1248
Nightingale v. Milwaukee Furniture Co., 17 Fed. 234.....	1516
Niles v. Fenn, 12 Misc. Rep. 470, 33 N. Y. Supp. 857.....	524
Niles v. Harmon, 80 Ill. 396.....	1486
Niles Tool Works Co. v. Louisville, N. A. & C. Ry. Co., 112 Fed. 561, 50 C. C. A. 390.....	421
Nimocks v. Grimm, 110 N. C. 230, 14 S. E. 684.....	108, 110
Nininger v. Norwood, 72 Ala. 277, 47 Am. Rep. 412....	938, 941, 952
N. K. Fairbanks Co. v. Dunn, 126 Fed. 227.....	995
Nisbet v. Nash, 52 Cal. 540.....	1528
Noble v. Blount, 77 Mo. 235.....	1479
Noble v. Cromwell, 26 Barb. 475.....	1207
Noble v. Grandin, 125 Mich. 383, 84 N. W. 465.....	30, 31
Noble v. McKeith, 127 Mich. 163, 8 Detroit Leg. N. 281, 86 N. W. 526.....	1441
Noble v. Murphy, 91 Mich. 653, 30 Am. St. Rep. 507, 52 N. W. 148.....	1506, 1510
Noble v. Union River Logging Co., 147 U. S. 165, 13 Sup. Ct. 271, 37 L. ed. 123.....	575, 584
Noe v. Gibson, 7 Paige, 513.....	303, 323
Nofsinger v. Reynolds, 52 Ind. 218.....	96, 98, 99
Noll v. Chattanooga Co. (Tenn. Ch. App.), 38 S. W. 287.....	1103
Noll v. Morgan, 82 Mo. App. 112.....	710
Norcross v. James, 140 Mass. 188, 2 N. E. 946.....	502, 506
Nord Deutscher Lloyd v. President etc. Ins. Co. of North America, 110 Fed. 420, 49 C. C. A. 1.....	1493
Nordenfelt v. Maxom-Nordenfelt G. & A. Co., Ltd., [1894] App. Cas. 535.....	523
Nordlinger v. Ostatag, 66 Ill. App. 661.....	1431

Norfolk & N. B. Hosiery Co. v. Arnold, 49 N. J. Eq. 390, 23 Atl. 514.....	34
Norfolk & W. R. Co. v. Old Dominion Baggage Co., 99 Va. 111, 3 Va. Sup. Ct. Rep. 55, 37 S. E. 784, 50 L. R. A. 722.....	1062
Norfor v. Busby, 19 Wash. 450, 53 Pac. 715.....	170
Norman v. Burns, 67 Ala. 248.....	1093
Normand v. Otoe Co., 8 Neb. 18.....	629
Normant v. Eureka Co., 98 Ala. 181, 39 Am. St. Rep. 45, 12 South. 454.....	1231
Norment v. Wilson, 5 Humph. 310.....	1186, 1194
Norris, Appeal of, 64 Pa. St. 275.....	1173
Norris v. Fox, 45 Fed. 406.....	1296, 1329
Norris v. Lake, 89 Va. 513, 16 S. E. 663.....	107, 112
Norris v. Wurster, 23 App. Div. 124, 48 N. Y. Supp. 656.....	620
North v. Earl of Strafford, 3 P. Wms. 148.....	1176
North v. Peters, 138 U. S. 271, 11 Sup. Ct. 346, 34 L. ed. 936.....	482, 835, 1132
North v. Piedmont Bank of Morganton, 121 N. C. 343, 28 S. E. 488.....	326
North v. Platte County, 29 Neb. 447, 26 L. R. A. 395, 45 N. W. 692.....	44, 622
North American Gutta Percha Co., In re, 17 How. Pr. 549, 9 Abb. Pr. 79.....	288, 290
North American L. & T. Co. v. Watkins, 109 Fed. 101, 48 C. C. A. 254.....	240, 260, 273
Northampton Bank v. Balliet, 8 Watts & S. 311, 42 Am. Dec. 297.....	371
North Bloomfield etc. Co. v. United States, 88 Fed. 664, 32 C. C. A. 84, affirming 81 Fed. 243.....	896
North British & Merc. Ins. Co. v. Lathrop, 25 U. S. App. 433, 70 Fed. 429, 17 C. C. A. 175.....	1086
North Carolina R. Co. v. Drew, 3 Woods, 674, Fed. Cas. No. 17,433.....	482
North Carolina R. R. Co. v. Wilson, 81 N. C. 223.....	160
Northeastern Ry. v. Martin, 2 Phill. Ch. 758.....	1517
Northern Cent. Ry. Co. v. Harrisburg etc. Co., 177 Pa. St. 142, 35 Atl. 624, 34 L. R. A. 572.....	964
Northern Cent. Ry. Co. v. Walworth, 193 Pa. St. 207, 74 Am. St. Rep. 683, 44 Atl. 253.....	1269
Northern Indiana R. Co. v. Michigan Central R. Co., 15 How. 233, 14 L. ed. 674.....	32
Northern Pac. R. R. Co. v. Clark, 153 U. S. 252, 14 Sup. Ct. 809, 38 L. ed. 706.....	662
Northern Pac. R. R. Co. v. Cunningham, 89 Fed. 594.....	828
Northern Pac. R. R. Co. v. Heflin, 27 C. C. A. 460, 83 Fed. 93..	411
Northern Pac. R. R. Co. v. Kurtzman, 82 Fed. 241.....	662
Northern Pac. R. R. Co. v. Lamont, 69 Fed. 23, 16 C. C. A. 364, 32 U. S. App. 480.....	416, 421
Northern Pac. R. R. Co. v. Patterson, 10 Mont. 93, 24 Pac. 704..	714
Northern Pac. R. R. Co. v. Patterson, 154 U. S. 130, 14 Sup. Ct. 977, 38 L. ed. 934.....	655
Northern Pac. R. R. Co. v. Soderberg, 86 Fed. 49.....	843
Northern Pac. R. R. Co. v. Walker, 47 Fed. 681.....	646
Northern Pac. R. R. Co. v. Whalen, 149 U. S. 157, 13 Sup. Ct. 822, 37 L. ed. 686.....	862
Northern Securities Co. v. United States, 193 U. S. 197, 24 Sup. Ct. 436, 48 L. ed. 679.....	1053, 1054

TABLE OF CASES CITED.

1713

Northern Trust Co. v. Markell, 61 Minn. 271, 63 N. W. 735.....	1263
Northern Trust Co. v. Snyder, 113 Wis. 516, 90 Am. St. Rep. 867, 89 N. W. 460.....	41
Northfield Knife Co. v. Shapleigh, 24 Neb. 635, 8 Am. St. Rep. 224, 39 S. W. 788.....	199
North Hudson Mut. B. & L. Assn. v. Childs, 86 Wis. 292, 56 N. W. 870.....	1428
North London Ry. Co. v. Great Northern Ry. Co., 11 Q. B. D. 30.	587
North Pacific Lumber Co. v. Lang, 28 Or. 246, 52 Am. St. Rep. 780, 42 Pac. 799.....	65, 78, 95, 97
North Pennsylvania R. Co. v. Inland Traction Co., 205 Pa. St. 579, 55 Atl. 774.....	772
Northwestern & Pac. Hypotheek Bank v. Ridpath, 29 Wash. 878, 70 Nac. 139.....	1114
Northwestern Lumber Co. v. Chehalis County, 24 Wash. 626, 64 Pac. 787.....	744
Northwestern Mut. Life Ins. Co. v. Cotton Exchange R. E. Co., 70 Fed. 155.....	1466
Northwestern Mut. Life Ins. Co. v. Kidder (Ind. App.), 69 N. E. 204.....	72, 84
Northwestern Mut. Life Ins. Co. v. Kidder, 162 Ind. 382, 70 N. E. 489.....	72, 73, 84, 91, 99
Northwood v. Barber etc. Co., 126 Mich. 284, 8 Det. Leg. N. 1, 85 N. W. 724, 54 L. R. A. 54.....	916
Norton v. Beaver, 5 Ohio, 178.....	1225
Norton v. Coons, 3 Denio. 130.....	1476
Norton v. Elwert, 29 Or. 583, 41 Pac. 926.....	847, 852, 857, 859
Norton v. Reid, 11 S. C. 593.....	1490
Norton Door Check & Spring Co. v. Hall, 37 Fed. 691.....	983
Norwalk Heating etc. Co. v. Vernam, 75 Conn. 662, 96 Am. St. Rep. 246, 55 Atl. 168.....	859, 914
Norwegian Plow Co. v. Bollman, 47 Neb. 186, 66 N. W. 292, 31 L. R. A. 747.....	1077
Norwich etc. R. R. v. Storey, 17 Conn. 364.....	4518
Norwood v. Baker, 172 U. S. 269, 19 Sup. Ct. 187, 43 L. ed. 443..	664
Norwood v. Norwood, 4 Har. & J. (Md.) 112.....	1210
Norwood v. Orient Ins. Co. (Tex. Civ App.), 44 S. W. 188.....	1135
Norwood v. Richardson (Del.), 57 Atl. 244.....	1099
Nottingham Patent Brick & Tile Co. v. Butler, L. R. 15 Q. B. D. 268.....	505
Nottingham Patent Brick & Tile Co. v. Butler, L. R. 16 Q. B. D. 778.....	505
Nouges v. Newlands, 118 Cal. 102, 50 Pac. 386.....	56
Nowack v. Berger, 133 Mo. 24, 54 Am. St. Rep. 663, 34 S. W. 489, 31 L. R. A. 813.....	1361
Noyes v. Cosselman, 29 Wash. 655, 92 Am. St. Rep. 937, 70 Pac. 61.....	872
Noyes v. Hubbard, 64 Vt. 302, 35 Am. St. Rep. 928, 23 Atl. 727, 15 L. R. A. 394.....	477
Nuckols v. Lyle, 8 Idaho, 589. 70 Pac. 401.....	630
Nunez v. Morgan, 77 Cal. 427, 19 Pac. 753.....	1259
Nunn v. Fabian, L. R. 1 Ch. 35.....	1350
Nunnally v. Strauss, 94 Va. 255, 26 S. E. 580.....	227
Nusbaum v. Locke, 53 Ill. App. 242.....	261, 269

Nussbaum v. Price, 80 Ga. 205, 5 S. E. 291.....	202
Nutbrown v. Thornton, 10 Ves. 159.....	849
Nuttingan v. Cooke, 16 Ves. 1.....	1368
Nuzum v. Morris, 25 W. Va. 559.....	1404
Nye v. Clark, 55 Mich. 599, 22 N. W. 57.....	936, 954
Nye v. Hawkins, 65 Tex. 600.....	1173, 1177
Nye v. Sochor, 92 Wis. 40, 53 Am. St. Rep. 896, 65 N. W. 854..	1078, 1101
Nye v. Town of Washburn, 125 Fed. 817.....	657

O

Oakdale Mfg. Co. v. Garst, 18 R. I. 484, 49 Am. St. Rep. 784, 28 Atl. 973, 23 L. R. A. 639.....	524
Oakes v. Myers, 68 Fed. 807.....	321
Oakey v. Cook, 41 N. J. Eq. 350, 7 Atl. 495.....	1295
Oakford v. Robinson, 48 Ill. App. 270.....	179
Oakley v. Paterson Bank, 2 N. J. Eq. 178.....	242, 243
Oakley v. Trustees etc., 6 Paige, 262.....	1225
O. & W. Thum Co. v. Tloczynski, 114 Mich. 149, 68 Am. St. Rep. 469, 72 N. W. 140, 38 L. R. A. 200, 45 Cent. L. J. 348.....	490
O'Bear Jewelry Co. v. Volfer, 106 Ala. 205, 54 Am. St. Rep. 31, 17 South. 525, 28 L. R. A. 707.....	1456, 1464
Ober v. Excelsior Planting Co., 44 La. Ann. 570, 10 South. 792..	261
Oberholser v. Greenfield, 47 Ga. 530.....	198
Oberon Land Co. v. Dunn, 56 N. J. Eq. 749, 40 Atl. 121.....	1245
Obert v. Obert, 5 N. J. Eq. 397.....	1209, 1212
Obert v. Obert, 10 N. J. Eq. 98.....	1201, 1213
O'Brien v. Baltimore Belt R. Co., 74 Md. 369, 22 Atl. 141, 13 L. R. A. 126.....	774
O'Brien v. Bolland, 166 Mass. 481, 44 N. E. 602.....	1296, 1297
O'Brien v. Drexilnis, 7 Ky. Law Rep. 519.....	1489
O'Brien v. Goodrich, 177 Mass. 32, 58 N. E. 151.....	955
O'Brien v. Harris, 105 Ga. 732, 31 S. E. 745.....	795, 932
O'Brien v. Mahoney, 179 Mass. 200, 88 Am. St. Rep. 371, 60 N. E. 493.....	1190
O'Brien v. Musical Mut. P. & B. Union, 64 N. J. Eq. 525, 54 Atl. 150.....	555
O'Brien v. O'Brien, Amb. 107.....	813
O'Brien v. Perry, 130 Cal. 526, 62 Pac. 927.....	1293
O'Brien v. Stanbach, 101 Iowa, 40, 63 Am. St. Rep. 368, 69 N. W. 1133.....	1412, 1421
O'Brien v. Wheelock, 78 Fed. 673.....	40
O'Brien v. Wheelock, 184 U. S. 450, 22 Sup. Ct. 354, 46 L. ed. 636; affirming 95 Fed. 883, 37 C. C. A. 309.....	40, 43
Ocean Beach Assn. v. Brinley, 34 N. J. Eq. 438.....	1167
Ocean City Assn. v. Chalfant, 65 N. J. Eq. 156, 55 Atl. 801.....	510
Ocean City Assn. v. Schurch, 57 N. J. Eq. 268, 41 Atl. 914..	510, 792
Ocean City R. Co. v. Bray, 55 N. J. Eq. 101, 35 Atl. 839....	767, 824
Oehsenbein v. Papelier, L. R. 8 Ch. 695.....	1089
Ocmulgee Lumber Co. v. Mitchell, 112 Ga. 528, 37 S. E. 749....	838
O'Connell v. Chicago Terminal Transfer Co., 184 Ill. 308, 56 N. E. 355.....	771
O'Connell v. Noonan, 1 App. Cas., D. C., 332.....	1153
O'Connor v. Jackson, 33 Wash. 219, 74 Pac. 372.....	1351
O'Connor v. Mechanics' Bank, 2 N. Y. Supp. 225, 18 N. Y. St. Rep. 88.....	273

O'Connor v. Mechanics' Bank, 54 Hun, 272, 7 N. Y. Supp. 230..	267
O'Connor v. Sheriff, 30 La. Ann. 441.....	1076
O'Connor v. Southern Pac. R. Co., 122 Cal. 681, 55 Pac. 688....	771
O'Connor v. Spaight, 1 Schoales & L. 305.....	1518
O'Dell v. Burnham, 61 Wis. 562, 21 N. W. 635.....	1165
Odell v. Metropolitan El. R. Co., 3 Misc. Rep. 335, 22 N. Y. Supp. 737.....	781
Odiorne v. Moulton, 64 N. H. 211, 9 Atl. 625.....	1484
Odle v. Odle, 73 Mo. 289.....	1232
Odlin v. Woodruff, 31 Fla. 160, 12 South. 227.....	674
O'Donnell v. First Nat. Bank, 9 Wyo. 408, 64 Pac. 337.. 263, 265, 271	
Off v. Title G. etc. Co., 87 Ill. App. 472.....	1120
Ogburn v. Elmore (Ga.), 48 S. E. 702.....	589
Ogburn v. Wilson, 93 N. C. 115.....	1510
Ogden v. Armstrong, 168 U. S. 224, 18 Sup. Ct. 98.....	660, 663, 664
Ogden v. Arnot, 29 Hun, 146.....	354
Ogden v. Chalfant, 32 W. Va. 559, 9 S. E. 879.....	187
Ogden v. Kip, 6 Johns. Ch. 160.....	484
Ogilvie v. Knox Ins. Co., 22 How. 380, 16 L. ed. 349.....	228
Ogles, In re, 93 Fed. 426.....	1079
O'Hare v. Downing, 130 Mass. 16.....	1225
Oher v. Excelsior Planting Co., 44 La. Ann. 570, 10 South. 792..	275
O'Herlihy v. Hedges, 1 Schoales & L. 123.....	1347
Ohio v. Thomas, 173 U. S. 276, 19 Sup. Ct. 453, 43 L. ed. 699..	579
Ohio & Miss. R. Co. v. Russell, 115 Ill. 52, 3 N. E. 561.....	384, 412
Ohio Baking Co. v. National Biscuit Co., 127 Fed. 116, 62 C. C. A. 116.....	990
Ohio Cultivator Co. v. People's Nat. Bank, 22 Tex. Civ. App. 643, 55 S. W. 765.....	1400
Ohio Oil Co. v. State of Indiana, 150 Ind. 698, 50 N. E. 1124, affirmed in 177 U. S. 190, 20 Sup. Ct. 576, 44 L. ed. 729.....	902
Ohlhauser v. Doud, 74 Wis. 400, 43 N. W. 169.....	191
Ohm v. Superior Court, 85 Cal. 545, 20 Am. St. Rep. 245, 26 Pac. 244.....	1437
Oil Co. v. Marbury, 91 U. S. 592, 23 L. ed. 331.....	47
Oil Run Petroleum Co. v. Gale, 6 W. Va. 525.....	70, 73, 90
O'Kane v. Kiser, 25 Ind. 168, 170.....	1366
O'Keefe v. Irvington Real Estate Co., 87 Md. 196, 39 Atl. 428..	1149
Old Colony R. R. Corp. v. Evans, 6 Gray, 25, 66 Am. Dec. 394....	1330
Old Colony Trust Co. v. Dubuque L. & T. Co., 89 Fed. 794.....	47
Old Colony Trust Co. v. Wichita, 123 Fed. 762.....	633
Oldfield v. Round, 5 Ves. 508.....	1364, 1366
Oldham v. Broom, 28 Ohio St. 41.....	1482
Oldham v. First Nat. Bank, 84 N. C. 304.....	167
Oldham v. Stephens, 45 Kan. 369, 25 Pac. 863.....	27
Olin v. Bale, 98 Ill. 53, 38 Am. Rep. 78.....	499
Olivas v. Olivas, 61 Cal. 382.....	1160
Olive v. Van Patten, 7 Tex. Civ. App. 630, 25 S. W. 428....	1018, 1048
Olivella v. New York etc. Co., 31 Misc. Rep. 203, 64 N. Y. Supp. 1086.....	831, 938
Oliver v. Jernigan, 46 Ala. 41.....	1210
Oliver v. Lansing, 48 Neb. 338, 67 N. W. 195.....	37
Oliver v. Memphis etc. R. R. Co., 30 Ark. 128.....	666
Oliver v. Montgomery, 42 Iowa, 36.....	1485
Oliver v. Parlin & Orendorff Co., 105 Fed. 272, 45 C. C. A. 200..	1079
Olmstead v. Distilling etc. Co., 67 Fed. 24.....	282, 283

Olmstead v. Distilling etc. Co., 73 Fed. 44.....	219
Olmstead v. Loomis, 9 N. Y. 423.....	883
Olney v. Tanner, 10 Fed. 101.....	443
Olson v. Bank of Tacoma, 15 Wash. 148, 45 Pac. 734.....	247
Olson v. Nunnally, 47 Kan. 391, 27 Am. St. Rep. 296, 28 Pac. 149.....	1118
Olson v. Seattle, 30 Wash. 687, 71 Pac. 201.....	766
Olson v. State Bank, 72 Minn. 320, 75 N. W. 378.....	396, 397
Olympia Water Works v. Gelbach, 16 Wash. 482, 48 Pac. 251.....	746
Olzendam Co., In re, 117 Fed. 179.....	291
O'Mahoney v. Dickson, 2 Schoales & L. 400.....	1518
O'Malley v. Borough of Olyphant, 198 Pa. St. 525, 48 Atl. 483....	624
O'Malley v. Ruddy, 79 Wis. 147, 24 Am. St. Rep. 702, 48 N. W. 116.....	1147
O'Neal v. Hines, 145 Ind. 32, 43 N. E. 946.....	524, 537
O'Neal v. Va. & Md. Bridge Co., 18 Md. 1, 79 Am. Dec. 669....	702
O'Neil v. Behanna (1897), 182 Pa. St. 236, 61 Am. St. Rep. 702, 37 Atl. 843, 38 L. R. A. 382.....	1026, 1027
O'Neil v. Birmingham Brewing Co., 101 Ala. 383, 13 South. 576..	1411
O'Neil v. McKeesport, 201 Pa. St. 386, 50 Atl. 920.....	822
Onondago Nation v. Thacher, 61 N. Y. Supp. 1027, 29 Misc. Rep. 428 (affirmed, 53 App. Div. 561, 65 N. Y. Supp. 1014).....	1264
Onslow v. ———, 16 Ves. 173.....	803, 807
Ophir Min. Co. v. Carpenter, 4 Nev. 534, 97 Am. Dec. 550.....	969
Opp v. Ward et al., 125 Ind. 241, 21 Am. St. Rep. 220, 24 N. E. 974.....	1477, 1494
Oppenheim v. Loftus (N. J.), 50 Atl. 795.....	946
Oppenheim v. Wolf, 3 Sandf. Ch. 571.....	84
Oppenheimer v. Levi, 96 Md. 296, 54 Atl. 74, 60 L. R. A. 729....	1233
Orange City v. Thayer (Fla.), 34 South. 573.....	633
Ord v. Johnson, 1 Jur., N. S., 1063, 1064.....	1256
Ordway v. Chace, 57 N. J. Eq. 478, 42 Atl. 149.....	1139
O'Reagan v. Duggan, 117 Iowa, 612, 91 N. W. 909.....	940
Oregon & C. R. Co. v. Jackson County, 38 Or. 589, 64 Pac. 307, 65 Pac. 369.....	645, 734
Oregon & C. R. Co. v. Portland, 35 Or. 229, 35 Pac. 452, 22 L. R. A. 713.....	736
Oregon Const. Co. v. Allen etc. Co., 41 Or. 209, 93 Am. St. Rep. 701, 69 Pac. 455.....	970
Oregon Real Estate Co. v. Multnomah County, 35 Or. 285, 58 Pac. 106.....	734
O'Reilly v. New York El. R. Co., 148 N. Y. 347, 42 N. E. 1063, 31 L. R. A. 407.....	777, 779, 783
Orem v. Wrightson, 51 Md. 34, 34 Am. Rep. 286.....	1512
Oriental Bank v. Nicholson, 3 Jur., N. S., 857.....	100
Orient Ins. Co. v. Reed, 81 Cal. 145, 22 Pac. 484.....	82
Original Vienna Bakery Co. v. Heissler, 50 Ill. App. 406. 207, 214, 215	
Ormond v. Martin, 37 Ala. 606.....	1212
Ormsby v. Graham, 123 Iowa, 202, 98 N. W. 724.....	1367, 1369
Ormsby v. Ottman, 85 Fed. 492, 29 C. C. A. 295.....	27
O'Rourke v. Orange, 51 N. J. Eq. (6 Dick.) 561, 26 Atl. 858....	958
Orphan Asylum v. McCartee, Hopk. Ch. (N. Y.) 429.....	110, 159
Orr v. Echols, 119 Ala. 340, 24 South. 357.....	1142
Orr v. Littlefield, 1 Wood. & M. 13, Fed. Cas. No. 1059.....	982
Orr v. Peters, 197 Pa. St. 606, 47 Atl. 849.....	1410

Orr Water Ditch Co. v. Larcombe, 14 Nev. 53.....	65
Orton v. Madden, 75 Ga. 83.....	202
Orton v. Smith, 18 How. 263, 15 L. ed. 263.....	16
Orvis v. Newell, 17 Conn. 97.....	1504
Osborn v. Bank of the United States, 9 Wheat. 738, 6 L. ed. 204	644, 658
Osborn v. Board of Suprs. of Hinds County, 71 Miss. 19, 14 South. 457.....	1251
Osborn v. Heyer, 2 Paige, 342.....	188, 194
Osborn v. McBride, 3 Saw. 590, Fed. Cas. No. 10,593.....	1535
Osborn v. Nicholson, 13 Wall. 654, 660, 20 L. ed. 689.....	1389
Osborn v. Oakland, 49 Neb. 340, 68 N. W. 506.....	608
Osborne v. Bradley, [1903] 2 Ch. 446.....	508, 511
Osborne v. Brooklyn etc. Co., 5 Blatchf. 366.....	932
Osborne v. Missouri Pac. R. Co., 147 U. S. 248, 13 Sup. Ct. 299, 37 L. ed. 155.....	762, 775, 785
Osborne v. Mull, 91 N. C. 203.....	1194
Osgood v. Jones, 60 N. H. 543.....	592
Osgood v. Laytin, 3 Keyes, 521.....	375
Osgood v. Maguire, 61 N. Y. 524.....	445
Osterhout v. Hyland, 27 Hun, 167....	600
Oswald v. Wolf, 129 Ill. 200, 21 N. E. 839.....	938, 946, 958
Otaheite Gold etc. Co. v. Dean, 102 Fed. 929.....	892
Oteri v. Scalzo, 145 U. S. 578, 12 Sup. Ct. 895, 36 L. ed. 824....	1526
Otis v. Gregory, 111 Ind. 504, 13 N. E. 39.....	1152
Otley v. Lines, 7 Price, 274, 276, 277.....	1415
Otley v. McAlpine's Heirs, 2 Gratt. 343.....	1197
Ottawa v. Barney, 10 Kan. 270.....	696
Ottawa v. Walker, 21 Ill. 605, 610, 71 Am. Dec. 121.....	678
Ottawa Glass Co. v. McCaleb, 81 Ill. 556, 562.....	678, 684
Ottumwa v. City Water Supply Co., 56 C. C. A. 219, 119 Fed. 315. 625	
Outcalt v. Appleby, 36 N. J. Eq. 73.....	1191
Overall v. Ruenzi, 67 Mo. 203.....	710, 711
Overing v. Foote, 43 N. Y. 290.....	1235
Overton v. Memphis etc. R. R. Co., 10 Fed. 866, 3 McCrary, 436	207, 248
Overton v. Warner, 68 Kan. 96, 74 Pac. 651.....	1132
Overton's Heirs v. Woodfolk, 6 Dana, 374.....	1200
Overturf v. Gerlach, 62 Ohio St. 127, 78 Am. St. Rep. 704, 56 N. E. 653.....	1418
Overweight etc. Co. v. Cahill & Hall Elevator Co., 86 Fed. 338..	984
Owen v. Davies, 1 Ves. Sr. 82, 83.....	1355
Owen v. Ford, 49 Mo. 436.....	805
Owen v. Frink, 24 Cal. 171.....	1382
Owen v. Gerson, 119 Ala. 217, 24 South. 413.....	1107
Owen v. Homan, 4 H. L. Cas. 997.....	107, 110, 112, 153, 155
Owen v. Homan, 3 Macn. & G. 378, 412.....	112, 153, 155
Owen v. Phillips, 73 Ind. 284.....	888
Owen v. Whitaker, 20 N. J. Eq. 122.....	550
Owens v. Crossett, 105 Ill. 354.....	832, 833
Owens v. McNally, 113 Cal. 444, 45 Pac. 710, 33 L. R. A. 369	1315, 1358
Owens v. Ranstead, 22 Ill. 161.....	1113
Owings v. Rhodes, 65 Md. 408, 9 Atl. 903.....	66

Oxley Stave Co. v. Coopers' Union, 72 Fed. 695.....	1030
Oxford v. Willoughby (N. Y.), 73 N. E. 677.....	914, 930

P

Pabst Brewing Co. v. Crenshaw, 120 Fed. 1.....	583
Pace v. Pace's Admr., 95 Va. 792, 30 S. E. 361, 44 L. R. A. 459.....	1497, 1508
Pach v. Geoffrey, 67 Hun, 401, 22 N. Y. Supp. 275, affirmed in 143 N. Y. 661, 39 N. E. 21.....	894
Pacific Bank v. Robinson, 57 Cal. 520, 40 Am. Rep. 120.....	1414
Pacific Express Co. v. Cornell, 59 Neb. 364, 81 N. W. 377.....	576
Pacific Express Co. v. Seibert, 142 U. S. 339, 12 Sup. Ct. 250, 30 L. ed. 1035.....	655, 656
Pacific Express Co. v. Siebert, 44 Fed. 310.....	646
Pacific Express Co. v. Williams, 2 Willson (Tex.) Civ. Cas. Ct. App., § 810.....	88
Pacific Hotel Co. v. Lieb, 83 Ill. 602.....	684
Pacific Postal etc. Cable Co. v. Dalton, 119 Cal. 604, 51 Pac. 1072.....	645, 668
Pacific Postal Tel. Co. v. Western Union Tel. Co., 50 Fed. 493..	499
Pacific R. Co. v. Mo. Pac. R. Co., 111 U. S. 520, 4 Sup. Ct. 583, 28 L. ed. 504.....	1096
Pacific R. Co. v. Wade, 91 Cal. 449, 456, 25 Am. St. Rep. 201, 27 Pac. 768, 13 L. R. A. 754.....	346
Packard v. Hayes, 94 Md. 233, 51 Atl. 32.....	613
Packard v. King, 3 Colo. 211.....	1208, 1486
Packard v. Packard, 16 Pick. 194.....	1186, 1194
Packard v. Stevens, 58 N. J. Eq. 489, 46 Atl. 250....	65, 74, 75, 76, 78
Packard v. Thiel College (Pa.), 56 Atl. 869.....	484, 544
Packham v. German Fire Ins. Co., 91 Md. 515, 80 Am. St. Rep. 461, 46 Atl. 1066, 50 L. R. A. 828.....	1496
Packington v. Packington, Dick. 101....	806
Packington's Case, 3 Atk. 215.....	813
Paddock v. Staley, 13 Colo. App. 363, 58 Pac. 363.....	384
Paddock v. Jackson, 16 Tex. Civ. App. 655, 41 S. W. 700.....	1133
Paddock v. Shields, 57 Miss. 340.....	1182
Paddock v. Somes, 102 Mo. 226, 238, 14 S. W. 746, 10 L. R. A. 254.....	911, 912
Paddock-Hawley Iron Co. v. McDonald, 61 Mo. App. 359.....	1398
Padwick v. Hurst, 18 Beav. 575.....	1517
Padwick v. Stanley, 9 Hare, 627.....	1521
Page v. Allen, 58 Pa. St. 338, 98 Am. Dec. 272.....	598, 610
Page v. Higgins, 150 Mass. 27, 22 N. E. 63, 5 L. R. A. 152.....	1140
Page v. Kennan, 38 Wis. 320.....	1251
Page v. Moffett, 85 Fed. 38.....	594, 595
Page v. Murray, 46 N. J. Eq. 325, 19 Atl. 11.....	508, 510
Page v. St. Louis, 20 Mo. 137.....	713
Page v. Supreme Lodge, Knights & Ladies of Protection, 161 Mass. 384, 37 N. E. 369.....	288, 290, 381
Page v. Webster, 8 Mich. 263, 77 Am. Dec. 446.....	1196, 1209
Paget v. Marshall, L. R. 28 Ch. D. 255.....	1141
Pagett v. Brooks, 140 Ala. 257, 37 South. 263.....	435
Paige v. Akins, 112 Cal. 401, 44 Pac. 666.....	834
Paine v. Harrison, 38 Minn. 346, 37 N. W. 588.....	1161

Paine v. McElroy , 73 Iowa, 81, 34 N. W. 615.....	175, 177
Paine v. Meller , 6 Ves. 349, 1 P. Wms. 61.....	1390, 1391
Painter v. Painter (Cal.), 36 Pac. 865, 875.....	148
Painter v. Painter , 138 Cal. 231, 94 Am. St. Rep. 47, 71 Pac. 90	
.....	350, 384
Palatka Water Works v. City of Palatka , 127 Fed. 161.....	636
Palmer v. Board of Education , 47 App. Div. 547, 62 N. Y. Supp.	
485.....	594
Palmer v. De Witt , 47 N. Y. 532, 7 Am. Rep. 480, 2 Sweeny, 530,	
5 Abb. Pr., N. S., 130.....	987
Palmer v. Foley , 45 How. Pr. 110.....	592
Palmer v. Harris , 60 Pa. St. 156, 100 Am. Dec. 557.....	1000
Palmer v. Hartford Fire Ins. Co. , 5 Conn. 488, 9 Atl. 241.....	1141
Palmer v. Israel , 13 Mont. 209, 33 Pac. 134.....	832
Palmer v. McCormick , 28 Fed. 541.....	28
Palmer v. Rich , 12 Mich. 414.....	1237
Palmer v. Snell , 111 Ill. 161.....	1400
Palmer v. Woods , 149 Ill. 146, 155, 35 N. E. 1122.....	1473
Palmer v. Wright , 10 Beav. 234.....	140
Palmer v. Yorks , 77 Minn. 20, 79 N. W. 587.....	1240, 1249
Palmer v. Young , 108 Ill. App. 252.....	803, 806
Palmer Pneumatic Tire Co. v. Newton Rubber Works , 73 Fed.	
218.....	982
Palmer Steel & Iron Co. v. Heat, Light & Power Co. , 160 Ind. 232,	
66 N. E. 690.....	1149
Palys v. Jewett , 32 N. J. Eq. 302.....	347
Pangburn v. American Vault, Safe & Lock Co. , 205 Pa. St. 93,	
54 Atl. 508.....	390
Pappenheim v. Metropolitan El. R. Co. , 128 N. Y. 436, 26 Am.	
St. Rep. 486, 28 N. E. 518, 13 L. R. A. 401.....	778, 781, 836, 860, 912
Paquin v. Milliken , 163 Mo. 79, 63 S. W. 417, 1092.....	1163
Paris v. Gilham , Coop. 56.....	70
Paris El. Light etc. Co. v. Telephone Co. (Tex. Civ. App.), 27	
S. W. 902.....	1065
Parish v. Camplin , 139 Ind. 1, 37 N. E. 607.....	1147
Parish v. Lewis , Freem. (Miss.) 299.....	1432, 1434
Parker v. Barker , 42 N. H. 78, 77 Am. Dec. 789.....	94, 95
Parker v. Bethel Hotel Co. , 96 Tenn. 252, 31 L. R. A. 706, 34	
S. W. 209.....	41
Parker v. Boutwell , 119 Ala. 297, 24 South. 860.....	1235
Parker v. Brant , 1 Fish. Pat. Cas. 58, Fed. Cas. No. 10,727.....	982, 983
Parker v. Browning , 8 Paige, 388, 35 Am. Dec. 717.....	301
Parker v. Catholic Bishop of Chicago , 146 Ill. 158, 34 N. E. 473..	786
Parker v. Challiss , 9 Kan. 155.....	694
Parker v. First Ave. Hotel , L. R. 24 Ch. D. 282.....	957, 960
Parker v. Furlong (Or.), 62 Pac. 490.....	834
Parker v. Garrison , 61 Ill. 250.....	1266
Parker v. Gerard , Amb. 236.....	1182, 1190, 1199
Parker v. John Pullman Co. , 36 App. Div. 208, 56 N. Y. Supp.	
734.....	1522
Parker v. Jones , 58 N. C. (5 Jones Eq.) 140, 75 Am. Dec. 441....	1135
Parker v. Lamb , 99 Iowa, 265, 68 N. W. 686, 34 L. R. A. 704..	440
Parker v. Larsen , 86 Cal. 236, 21 Am. St. Rep. 30, 24 Pac. 989..	972
Parker v. Metzger , 12 Or. 407, 7 Pac. 518.....	1231
Parker v. Maryland Cir. Ct. Judges , 25 U. S. (12 Wheat.) 561,	
6 L. ed. 729.....	1087

Parker v. Nightingale, 6 Allen, 341, 83 Am. Dec. 632.....	501, 503
Parker v. Oxendine, 85 Mo. App. 212.....	1128
Parker v. Parker, 93 Ala. 80, 9 South. 426.....	1156
Parker v. Parker, 82 N. C. 165.....	150
Parker v. Shannon, 121 Ill. 452, 13 N. E. 155.....	1223
Parker v. Stoughton Mill Co., 91 Wis. 174, 51 Am. St. Rep. 881, 64 N. W. 751.....	439, 442
Parker v. Wilson, 66 Ill. App. 91.....	956
Parker v. Winnipisiogee etc. Co., 67 U. S. (2 Black) 545, 17 L. ed. 333.....	878
Parkin, In re, [1892] 3 Ch. D. 510, 517.....	1259
Parkin v. Sidons, L. R. 16 Eq. 34.....	140
Parkin v. Thorold, 16 Beav. 59.....	1333, 1339, 1340, 1341
Parks v. Jackson, 11 Wend. 442.....	98, 99
Parks v. People's Bank, 97 Mo. 130, 10 Am. St. Rep. 295, 11 S. W. 41.....	1133
Parmelee v. Price, 208 Ill. 544, 70 N. E. 725.....	1456
Parmeter v. Lomax, 68 Kan. 61, 74 Pac. 634.....	1427
Parmeter v. Bourne, 8 Wash. 45, 35 Pac. 586, 757.....	628
Parmley v. Railroad Companies, 3 Dill. C. C. 25, Fed. Cas. No. 10,768.....	662
Parody v. School Dist., 15 Neb. 514, 19 N. W. 633.....	631
Parr v. Lovegrove, 4 Drew. 176.....	1330
Parrotte v. City of Omaha, 61 Neb. 96, 84 N. W. 602.....	717
Parsons v. Durand, 150 Ind. 203, 49 N. E. 1047.....	592
Parsons v. Hartman, 25 Or. 547, 42 Am. St. Rep. 803, 37 Pac. 61, 30 L. R. A. 98.....	1128
Parsons v. Hughes, 12 Md. 1.....	816, 817
Parsons v. Hunt (Tex. Civ. App.), 81 S. W. 120.....	932
Parsons v. McKinley, 56 Minn. 464, 57 N. W. 1134.....	1160
Parsons v. Monroe Manufacturing Co., 4 N. J. Eq. 187, 206..	242, 243
Parsons v. Northampton, 154 Mass. 410, 28 N. E. 350.....	621
Partlow v. Moore, 184 Ill. 119, 56 N. E. 317.....	68
Partridge v. Gopp, Amb. 596, 598, also 1 Eden, 163, 168.....	1415
Partridge v. Luce, 36 Me. 16.....	1203
Partlow v. Lane, 42 Ky. (3 B. Mon.) 424, 39 Am. Dec. 473.....	1442
Pascagoula etc. Co. v. Dixon, 77 Miss. 587, 78 Am. St. Rep. 537, 28 South. 724.....	929, 973
Pasco v. Gamble, 15 Fla. 562.....	167
Passaic Print Works v. Dry Goods Co. (1900), 105 Fed. 163, 44 C. C. A. 426.....	1032
Passyunk Bldg. Assn.'s Appeal, 83 Pa. St. 441.....	1517
Patchen v. Rofkar, 52 App. Div. 367, 65 N. Y. Supp. 367.....	1429
Paterson v. Baker, 51 N. J. Eq. 49, 26 Atl. 324.....	1153
Paterson etc. R. R. Co. v. Jersey City, 9 N. J. Eq. 434..	646, 720, 1087
Patoka Tp. v. Hopkins, 131 Ind. 142, 31 Am. St. Rep. 417, 30 N. E. 896.....	872
Paton v. Lancaster, 38 Iowa, 494....	1250
Patoni v. Campbell, 12 Mees. & W. 277.....	84
Patterson v. Blake, 12 Ind. 436.....	1189, 1534
Patterson v. Glassmire, 166 Pa. St. 230, 31 Atl. 40.....	524, 526
Patterson v. Hewitt, 195 U. S. 309, 25 Sup. Ct. 35, 49 L. ed.	37, 47, 48
Patterson v. Hewitt (N. Mex.), 66 Pac. 552, 55 L. R. A. 658	46, 48, 56, 61

Patterson v. Hubbs, 65 N. C. 119.....	590
Patterson v. Lynde, 106 U. S. 519, 1 Sup. Ct. 432, 27 L. ed. 265..	1472
Patterson v. Lynde, 112 Ill. 196.....	1473
Patterson v. Matthews, 3 Bibb. 80.....	1078
Patterson v. Patterson, 81 Iowa, 626, 47 N. W. 768.....	1159
Patterson v. Patterson Dry Goods Co., 207 Pa. St. 252, 56 Atl. 442.....	400
Patterson v. Perry, 14 How. Pr. 505.....	82
Patterson v. Wollman, 5 N. Dak. 608, 33 L. R. A. 536, 67 N. W. 1040.....	1002, 1003
Patton v. Skillman, 34 N. J. Eq. 344.....	1265
Patton v. Bragg, 113 Mo. 595, 35 Am. St. Rep. 730, 20 S. W. 1059.....	1411
Patton v. McClure, Mart. & Y. 333.....	1354
Patton v. Moore, 16 W. Va. 428, 37 Am. Rep. 789.....	828
Patton v. Nixon, 33 Or. 159, 52 Pac. 1048.....	1159
Patton v. Stephens, 14 Bush. 324.....	598, 610, 629
Patton v. Wagner, 19 Ark. 233.....	1184
Paulino v. Portuguese Ben. Assn., 19 R. I. 165, 26 Atl. 36, 20 L. R. A. 272.....	999
Pavesich v. New England Life Ins. Co. (Ga.), 50 S. E. 68.....	1060
Payne v. Baxter, 2 Tenn. Ch. 517.....	330, 331
Payne v. Becker, 87 N. Y. 153.....	1171
Payne v. Kansas & A. Val. R. Co., 46 Fed. 546, 553....	761, 764, 835
Payne v. Payne, 97 Md. 678, 55 Atl. 368.....	1099
Payne v. Western & Atl. R. R. Co. (1884), 13 Lea (Tenn.), 507, 49 Am. Rep. 666.....	1048
Paynter v. Evans, 7 B. Mon. 420.....	1077
Payson v. Jacobs (Wash.), 80 Pac. 429.....	336
Payson v. Lamson, 134 Mass. 593, 45 Am. Rep. 348.....	1076
Payton v. McQuown, 97 Ky. 757, 53 Am. St. Rep. 437, 31 S. W. 874, 31 L. R. A. 33.....	1077, 1078
P. Dougherty Co. v. Gring, 89 Md. 535, 43 Atl. 912.....	1488
Peabody v. Fellows, 177 Mass. 290, 58 N. E. 1019.....	1356
Peabody v. New England Waterworks Co., 184 Ill. 625, 75 Am. St. Rep. 195, 56 N. E. 957.....	372, 374
Peabody v. Norfolk, 98 Mass. 452, 96 Am. Dec. 664.....	490, 498, 531
Peabody v. Westerly Waterworks, 20 R. I. 176, 37 Atl. 807....	547
Peace v. Nailing, 1 Dev. Eq. (16 N. C.) 289.....	1078
Peacock v. Peacock, 16 Ves. 49.....	143
Peacock v. Penson, 11 Beav. 355.....	1320
Peacock v. Spitzelberger, 16 Ky. Law Rep. 803, 29 S. W. 877..	870
Peacock v. Williams, 110 Fed. 917.....	1426
Peagram v. King, 9 N. C. 295, 11 Am. Dec. 793.....	1103
Peak v. Hayden, 3 Bush (Ky.), 125.....	846
Peake, Ex parte, 2 Rose, 54.....	1537
Pearce v. Bastable, [1901] L. R. 2 Ch. 122, 125.....	1387
Pearce v. Jennings, 94 Ala. 524, 10 South. 511.....	201
Pearce v. Olney, 20 Conn. 544.....	1096
Pearl v. Deacon, 24 Beav. 186, 1 De Gex & J. 461.....	1494
Pearl v. Nashville, 10 Yerg. (Tenn.) 179.....	1517
Pearne v. Lisle, Amb. 75, 77.....	1264
Pearson v. Allen, 151 Mass. 79, 21 Am. St. Rep. 426, 23 N. E. 731.	932
Pearson v. Cardon, 2 Russ. & M. 606, 609-612, 1 Sim. 218.....	
.....	77, 78, 87, 88, 89

Pearson v. Carlton, 18 S. C. 47.....	1202, 1203
Pearson v. Gillenwaters, 99 Tenn. 446, 63 Am. St. Rep. 844, 42 S. W. 9.....	154
Pearson v. Kendrick, 74 Miss. 235, 21 South. 37.....	183, 262, 272
Pearson v. Leary, 126 N. C. 504, 36 S. E. 35, 127 N. C. 114, 37 S. E. 149.....	365
Pearson v. Parker, 3 N. H. 366.....	1479
Pearson v. Pearson, 59 S. C. 367, 82 Am. St. Rep. 846, 37 S. E. 917.....	1403
Pease v. Christman, 158 Ind. 642, 64 N. E. 90.....	1498
Pease v. Egan, 131 N. Y. 262, 30 N. E. 102.....	1498
Pease v. Smith, 63 Ill. App. 411.....	293
Peaslee v. Breed, 10 N. H. 489, 34 Am. Dec. 178.....	1487
Peatman v. Centerville Light etc. Co., 100 Iowa, 245, 69 N. W. 541.....	226
Peay v. Seigler, 48 S. C. 496, 59 Am. St. Rep. 731, 26 S. E. 885.....	1288, 1351
Peck v. Belknap, 130 N. Y. 394, 29 N. E. 977.....	619
Peck v. Conway, 119 Mass. 546.....	501, 504
Peck v. Elder, 3 Sandf. 126.....	917, 923
Peck v. Lindsay, 2 Fed. 688.....	982
Peck v. Roe, 110 Mich. 52, 67 N. W. 1080.....	901
Peck v. Schenectady Ry. Co., 170 N. Y. 298, 63 N. E. 357, modifying 67 App. Div. 359, 73 N. Y. Supp. 794.....	772, 836
Peck Lateral Ditch Co. v. Pella Irr. Ditch Co., 19 Colo. 222, 34 Pac. 988.....	1100
Peebles v. Gay, 115 N. C. 38, 44 Am. St. Rep. 429, 20 S. E. 173.....	1494, 1503, 1510
Peek v. Matthews, L. R. 3 Eq. 515.....	509
Peek v. Peek, 77 Cal. 106, 11 Am. St. Rep. 244, 19 Pac. 227, 1 L. R. A. 185.....	1362
Peek v. Sexton, 41 Iowa, 566.....	1226
Peek v. Trinsmaran Iron Co., L. R. 2 Ch. D. 115.....	166
Peeler v. Levy, 26 N. J. Eq. 330.....	1369
Peeples v. Byrd, 98 Ga. 688, 25 S. E. 677.....	582
Peers v. Lambert, 7 Beav. 546, 547.....	1366
Peery v. Elliott, 100 Va. 264, 40 S. E. 919.....	1351
Pegram v. New York El. R. Co., 147 N. Y. 135, 41 N. E. 424.....	778, 780
Peirce v. Chism, 23 Ind. App. 505, 77 Am. St. Rep. 441, 55 N. E. 795.....	334, 343, 353
Peirce v. Jones, 24 Ind. App. 286, 56 N. E. 683.....	334, 343
Peirsoll v. Elliott, 6 Pet. 95, 8 L. ed. 332.....	1152, 1226, 1239
Pelham v. Moreland, 11 Ark. 442.....	1094
Pelican River Milling Co. v. Maurin, 67 Minn. 418, 69 N. W. 1149.....	1133
Pelletier v. Greenville Lumber Co., 123 N. C. 596, 68 Am. St. Rep. 837, 31 S. E. 855.....	309, 311, 312, 317, 318, 320
Pelton v. Commercial Nat. Bank, 101 U. S. 143, 25 L. ed. 901....	658
Pelzer v. Hughes, 27 S. C. 408, 3 S. E. 781.....	108, 110, 112, 202
Pelzer Mfg. Co. v. Hamburg-Bremen Fire Ins. Co., 71 Fed. 826.....	1124
Pence v. Bryant, 54 W. Va. 263, 46 S. E. 275.....	931
Pence v. Garrison, 93 Ind. 345.....	872
Pendarves v. Monro, [1892] L. R. 1 Ch. 611.....	942
Pender v. Mallett, 123 N. C. 57, 31 S. E. 351.....	375
Pendleton v. Johnson, 85 Ga. 840, 11 S. E. 144.....	202
Pendleton v. Perkins, 49 Mo. 565.....	1417, 1422

Pendleton v. Russell, 144 U. S. 640, 12 Sup. Ct. 743, 36 L. ed. 574	381, 382
Pendry v. Wright, 20 Fla. 828.....	1173, 1175
Penfield v. Penfield, 41 Conn. 474.....	1159
Pengall v. Ross, 2 Eq. Abr. 46.....	1354
Penick v. High Shoals Mfg. Co., 113 Ga. 592, 38 S. E. 973.....	675
Penn v. Bahnson, 89 Va. 253, 15 S. E. 586.....	1443, 1490
Penn v. Folger, 182 Ill. 76, 55 N. E. 192 (reversing 77 Ill. App. 365).....	53
Penn v. Hayward, 14 Ohio St. 302.....	24, 29
Penn v. Ingles, 82 Va. 65.....	1494
Penn v. Lord Baltimore, 1 Ves. Sr. 444, 2 Lead. Cas. Eq., 4th Am. ed., 1806, and notes.....	15, 29
Penn v. Whiteheads, 12 Gratt. 74.....	192
Pennie v. Hildreth, 81 Cal. 127, 22 Pac. 398.....	1247, 1252, 1253
Penniman v. New York Balance etc. Co., 13 How. Pr. 40.....	1070
Penniman v. Rodman, 13 Met. 382.....	1271
Pennington v. Brinsop etc. Co., L. R. 5 Ch. D. 769....	906, 944, 966
Penn Mutual Life Ins. Co. v. City of Austin, 168 U. S. 685, 18 Sup. Ct. 223, 42 L. ed. 627.....	40, 636
Penn Mutual Life Ins. Co. v. Union Trust Co., 83 Fed. 891.....	66
Pennoyer v. Neff, 95 U. S. 714, 24 L. ed. 565.....	27 28, 117
Pennsylvania v. Wheeling etc. Co., 13 How. (U. S.) 518, 14 L. ed. 249.....	872, 930, 973
Pennsylvania C. Co. v. Delaware etc. Co., 31 N. Y. 91.....	1087
Pennsylvania Co. v. Jacksonville T. & K. W. R. Co., 55 Fed. 131, 2 U. S. App. 606.....	107, 251
Pennsylvania Co. v. Chicago, 181 Ill. 289, 54 N. E. 825, 53 L. R. A. 223.....	864
Pennsylvania Lead Co., Appeal of, 96 Pa. St. 116, 42 Am. Rep. 534.....	881
Pennsylvania R. Co. v. Angel, 41 N. J. Eq. (14 Stew.) 316, 56 Am. Rep. 1, 7 Atl. 432.....	910
Pennsylvania R. Co. v. Glenwood etc. Co., 184 Pa. St. 227, 41 Wkly. Not. Cas. 441, 39 Atl. 80.....	860
Pennsylvania R. Co. v. Montgomery etc. Ry., 167 Pa. St. 62, 46 Am. St. Rep. 659, 31 Atl. 468, 36 Wkly. Not. Cas. 153, 27 L. R. A. 766.....	922
Pennsylvania R. Co. v. National Docks etc. R. Co., 56 Fed. 697.....	577, 585
Pennsylvania R. Co. v. National R. Co., 23 N. J. Eq. 441.....	1004
Pennybacker v. Leary (Iowa), 21 N. W. 575.....	1189
Pennypacker's Appeal, 57 Pa. St. 114.....	64
Penrhyn etc. Co. v. Granville etc. Co., 84 App. Div. 92, 82 N. Y. Supp. 547.....	968
Pensacola etc. Co. v. Spratt, 12 Fla. 26, 91 Am. Dec. 747....	493, 834
Penzel Grocer Co. v. Williams, 53 Ark. 81, 13 S. W. 736.....	162
People v. Barrett, 203 Ill. 99, 96 Am. St. Rep. 297, 67 N. E. 742..	588
People v. Board of Supervisors, 75 Cal. 179, 16 Pac. 776.....	628
People v. Brooks, 40 Mich. 333, 29 Am. Rep. 534.....	309, 330
People v. Bushwick Chem. Co., 63 Hun, 633, 18 N. Y. Supp. 542; affirmed, 133 N. Y. 694, 31 N. E. 627.....	435
People v. Canal Board, 55 N. Y. 390.....	573, 586
People v. Center, 66 Cal. 551, 5 Pac. 263, 6 Pac. 481.....	1253, 1254
People v. Central City Bank, 35 How. Pr. (N. Y.) 428, 53 Barb. 412.....	304

People v. Central R. Co., 42 N. Y. 283.....	32
People v. Clark, 70 N. Y. 518.....	608
People v. Crockett, 9 Cal. 112.....	1395
People v. District Court, 26 Colo. 386, 58 Pac. 604, 46 L. R. A. 850.....	792
People v. District Court, 29 Colo. 182, 68 Pac. 242.....	577, 578
People v. District Court, 29 Colo. 277, 93 Am. St. Rep. 61, 68 Pac. 224.....	590
People v. District Court (Colo.), 80 Pac. 909.....	209
People v. Draper, 24 Barb. 265	590
People v. Dwyer, 90 N. Y. 402	598, 605, 607
People v. Equity etc. Co., 141 N. Y. 232, 36 N. E. 194	930
People v. Gold Run etc. Co., 66 Cal. 138, 56 Am. Rep. 80, 4 Pac. 1152	925, 929, 973
People v. Goss, 99 Ill. 355	1395
People v. Granite State Provident Assn., 161 N. Y. 492, 55 N. E. 1053	454, 455
People v. Henderson, 12 Colo. 379, 21 Pac. 144.....	671
People v. Ill. Bldg. & L. Assn., 56 Ill. App. 642. 276, 277, 278, 282, 283	
People v. Judge of St. Clair Circuit, 31 Mich. 456.....	212, 262, 275
People v. Knickerbocker Life Ins. Co., 106 N. Y. 619, 13 N. E. 447	381
People v. Mayor, 32 Barb. 35	601
People v. Mayor, 9 Abb. Pr. 253	601
People v. McClees, 20 Colo. 403, 38 Pac. 468, 26 L. R. A. 646....	591
People v. Mead, 29 How. Pr. (N. Y.) 360	193, 196
People v. Mills, 30 Colo. 262, 70 Pac. 322	589
People v. Mould, 37 App. Div. 35, 55 N. Y. Supp. 453, reversing 24 Misc. Rep. 287, 52 N. Y. Supp. 1032	928, 972
People v. Norton, 1 Paige, 17	260, 265, 267
People v. People's etc. Co., 32 Misc. Rep. 478, 66 N. Y. Supp. 529.....	920
People v. Perris Irr. Dist., 142 Cal. 601, 76 Pac. 381	1096
People v. Remington, 121 N. Y. 328, 24 N. E. 793, 8 L. R. A. 458	1400
People v. Stanley, 6 Ind. 410, 412	1415
People v. Sturtevant, 9 N. Y. 263, 59 Am. Dec. 536.....	598, 605
People v. Temple, 103 Cal. 447, 37 Pac. 414.....	1113
People v. Third Ave. R. R., 45 Barb. 68	930
People v. Third Ave. Sav. Bank, 50 How. Pr. 22.....	281
People v. Truckee Lumber Co., 116 Cal. 397, 58 Am. St. Rep. 183, 48 Pac. 374, 39 L. R. A. 581	797, 896
People v. Union Building & Loan Assn. (Cal.), 58 Pac. 822....	237
People v. Van Buren, 136 N. Y. 252, 32 N. E. 775, 33 N. E. 743, 20 L. R. A. 446.....	817, 1430
People v. Vanderbilt, 28 N. Y. 396, 84 Am. Dec. 351, affirming 38 Barb. 282	928, 972
People v. Washington Ice Co., 18 Abb. Pr. 382	245
People v. Weigley, 155 Ill. 491, 40 N. E. 300.....	112, 209, 238
People's Bank v. Brice, 47 S. C. 134, 24 S. E. 1038.....	1403
People's Bank v. Calhoun, 102 U. S. 256, 26 L. ed. 101....	308, 329
People's Electric L. & P. Co. v. Capital Gas & E. L. Co., 25 Ky. Law Rep. 327, 75 S. W. 280	1003
People's Gas Co. v. Tyner, 131 Ind. 277, 31 Am. St. Rep. 433, 31 N. E. 59. 16 L. R. A. 443	794, 896

People's Home Savings Bank v. Rickard , 139 Cal. 285, 73 Pac. 858.....	1471
People's Investment Co. v. Crawford (Tex. Civ. App.), 45 S. W. 738	207, 209, 212, 246
People's Nat. Bank v. Kern , 193 Pa. St. 59, 44 Atl. 331, 44 Wkly. Not. Cas. 457	1410
People's Nat. Bank v. Marye , 107 Fed. 570.....	659
People's Nat. Bank v. Marye , 191 U. S. 272, 24 Sup. Ct. 68, 48 L. ed. 180	662
People's Sav. Bank v. Colorado Min. etc. Co. , 8 Colo. App. 354, 46 Pac. 620	547
People's Sav. Bank v. Layman , 134 Fed. 635	660
People's Sav. Bank v. Look , 95 Mich. 7, 54 N. W. 629.....	71, 93
People's Sav. Bank v. Tripp , 13 R. I. 621.....	738
Peoria v. Johnston , 56 Ill. 45	764, 848
Peoria & R. I. R. Co. v. Schertz , 84 Ill. 135.....	774, 775
Perceval v. Phipps , 2 Ves. & B. 19	989
Percy v. Cockrill , 53 Fed. 872, 4 C. C. A. 73, 10 U. S. 574....	39
Perham v. Haverhill Fiber Co. , 64 N. H. 2, 3 Atl. 312.....	1430
Pericke, Ex parte , 2 Mer. 452.....	280
Perkins v. Baer , 95 Mo. App. 70, 68 S. W. 939	1240
Perkins v. Ede , 16 Beav. 193	1366, 1371
Perkins v. Foye , 60 N. H. 496	946
Perkins v. Hadsell , 50 Ill. 216	1296
Perkins v. Mason , 105 Mo. App. 315, 79 S. W. 987.....	836
Perkins v. Trippe , 40 Ga. 225	89
Perkins v. Wakeham , 86 Cal. 580, 21 Am. St. Rep. 67, 25 Pac. 51	27, 1250, 1252
Perkins Lumber Co. v. Wilkinson (Ga.), 43 S. E. 696.....	791
Perrin v. Lepper , 56 Mich. 351, 23 N. W. 39.....	108, 149
Perrin v. Stevens (Tex. Civ. App.), 29 S. W. 927.....	1131
Perrine v. Taylor , 43 N. J. Eq. 128, 12 Atl. 769.....	870
Perrot v. Perrot , 3 Atk. 94.....	801, 802, 816
Perry v. Godhe , 82 Fed. 141.....	366
Perry v. Howe Co-op. Creamery Co. (Iowa), 101 N. W. 150....	921
Perry v. Johnston , 95 Fed. 322.....	1095
Perry v. Kinneer , 42 Ill. 160.....	601, 609
Perry v. Oil Mill Co. , 93 Ala. 364, 9 South. 217.....	550
Perry v. Oriental Hotel Co. , L. R. 5 Ch. 420.....	276, 277
Perry v. Parker , 1 Wood & M. 280, Fed. Cas. No. 11,010.....	843
Perry v. Pratt , 31 Conn. 433.....	1172, 1173, 1174
Perry v. Sadler (Ark.), 88 S. W. 832.....	1139
Perry v. Shipway , 4 De Gex & J. 353.....	564
Perry v. Siter , 37 Mo. 273.....	1099
Perry v. Thompson , 108 Ala. 586, 18 South. 524.....	492
Perry v. Truefitt , 6 Beav. 66.....	1000
Peru v. Bearss , 55 Ind. 576.....	687
Petalka v. Fitle , 33 Neb. 756, 51 N. W. 131.....	1119
Petaluma Sav. Bank v. Superior Court , 111 Cal. 488, 485, 44 Pac. 177	257, 309, 313, 315, 319
Peter v. Kahn (Ala.), 9 South. 729.....	261, 271, 272
Peter v. Prettyman , 62 Md. 566.....	598, 610
Peters v. Dickinson , 67 N. H. 389, 32 Atl. 154.....	1354
Peters v. League , 13 Md. 58, 71 Am. Dec. 622.....	1111
Petersburg Sav. & Ins. Co. v. Dellatorre , 70 Fed. 643, 17 C. C. A. 310, 30 U. S. App. 504.....	409, 410

Peterson v. Beha, 161 Mo. 513, 62 S. W. 462.....	878
Peterson v. Chase, 115 Wis. 239, 91 N. W. 687, 688.....	1292
Peterson v. Ferrell, 127 N. C. 169, 37 S. E. 189.....	815
Peterson v. Gittings, 107 Iowa, 306, 77 N. W. 1056.....	1424, 1427
Peterson v. Orr, 12 Ga. 466, 58 Am. Dec. 484.....	821
Peterson v. Santa Rosa, 119 Cal. 387, 51 Pac. 557.....	864, 966
Pethtel v. McCullough, 49 W. Va. 520, 39 S. E. 199.....	46
Petrie v. Eastern Counties Ry. Co., 1 Railway Cases, 462.....	1320
Petrolia Mfg. Co. v. Jenkins, 29 App. Div. 403, 51 N. Y. Supp. 1028	530
Pettibone v. Hamilton, 40 Wis. 402.....	930
Pettibone v. La Crosse & M. R. Co., 14 Wis. 443.....	788
Pettibone v. United States, 148 U. S. 197, 13 Sup. Ct. 542, 37 L. ed. 419.....	1039
Pettigrew v. Village of Evansville, 25 Wis. 223, 3 Am. Rep. 50..	872
Pettit v. Shepherd, 5 Paige, 493, 28 Am. Dec. 437.....	1225
Petty v. Haas, 122 Iowa, 257, 98 N. W. 104.....	1532
Petty v. Petty, 4 B. Mon. 215, 39 Am. Dec. 501.....	1171
Pewaukee, Village of, v. Savoy, 103 Wis. 271, 79 N. W. 436, 50 L. R. A. 836	930
Pfister v. Wade, 56 Cal. 43.....	65, 67, 73, 77, 84, 94, 95, 101
Phelps v. Green, 3 Johns. Ch. 302.....	1210, 1214
Phelps v. Harris, 101 U. S. 375, 25 L. ed. 857.....	1235
Phelps v. Nowlan, 72 N. Y. 39, 28 Am. Rep. 93.....	898
Phelps v. Smith, 116 Ind. 399, 19 N. E. 156.....	1426
Phelan v. Smith, 22 Wash. 397, 61 Pac. 31.....	745
Phelps v. Townsley, 10 Allen, 554.....	1195
Phenix Ins. Co. v. Perkins (S. D.), 101 N. W. 1110.....	575
Philadelphia Ball Club v. Lajoie, 202 Pa. St. 210, 90 Am. St. Rep. 627, 51 Atl. 973, 58 L. R. A. 227.....	519, 1294, 1295, 1299
Philadelphia Mtg. etc. Co. v. Goos, 47 Neb. 804, 66 N. W. 843.168, 178	
Philadelphia Mtg. etc. Co. v. Omaha, 63 Neb. 280, 93 Am. St. Rep. 442, 56 L. R. A. 150, 88 N. W. 523, 65 Neb. 93, 90 N. W. 1005	714, 717
Philadelphia Mortgage etc. Co. v. Oyler, 61 Neb. 702, 85 N. W. 899	168, 171, 185
Philadelphia Trust, S. D. & Ins. Co. v. Philadelphia Trust Co., 123 Fed. 534	999
Philadelphia Underwriters v. Fort Worth etc. R. Co., 31 Tex. Civ. App. 104, 71 S. W. 419	1496, 1506
Philadelphia, W. & B. R. Co. v. Neary, 5 Del. Ch. 600.....	646, 673
Philadelphia W. & B. R. Co. v. Wilmington City Ry. Co. (Del.), 38 Atl. 1067	544
Philipp v. Von Raven, 26 Misc. Rep. 552, 57 N. Y. Supp. 701....	150
Phillippi v. Leet, 19 Colo. 246, 35 Pac. 540.....	1246
Phillips v. Bancroft, 75 Vt. 357, 56 Atl. 9.....	743
Phillips v. Berger, 2 Barb. 608.....	1263
Phillips v. Bordman, 4 Allen, 147	942
Phillips v. Dorris, 56 Neb. 293, 76 N. W. 555.....	1201
Phillips v. Eiland, 52 Miss. 721	167, 197
Phillips v. Great Western Ry. Co., L. R. 7 Ch. 409.....	531
Phillips v. Homfray, L. R. 6 Ch. App. 770.....	1308
Phillips v. Johnson, 14 B. Mon. 140.....	1187
Phillips v. Kesterson, 154 Ill. 572, 39 N. E. 599.....	1441
Phillips v. Kuhn, 35 Neb. 187, 52 N. W. 881.....	1130
Phillips v. Mayor, 61 Ga. 386.....	634
Phillips v. Negley, 117 U. S. 675, 6 Sup. Ct. 901, 29 L. ed. 1013..	1075

Phillips v. Phillips, 9 Hare, 471.....	1517
Phillips v. Phillips, 1 Mylne & K. 649.....	1534
Phillips v. Pinney Coal & Coke Co., 53 W. Va. 543, 97 Am. St. Rep. 1040, 44 S. E. 774	58
Phillips v. Providence Steam Engine Co., 21 R. I. 302, 43 Atl. 598, 45 L. R. A. 560.....	547
Phillips v. Pullen, 45 N. J. Eq. 5, 16 Atl. 9.....	1076
Phillips v. Sioux Falls, 5 S. D. 524, 59 N. W. 881.....	740
Phillips v. Sylvester, L. R. 8 Ch. App. 173.....	1389
Phillips v. Thompson, 1 Johns. Ch. 131.....	1257
Phillips v. Treeby, 8 Jur., N. S., 999.....	946
Phillips v. Winslow, 57 Ky. (18 B. Mon.) 431, 68 Am. Dec. 729	835, 1134
Phillips v. Wise (Tex. Civ. App.), 31 S. W. 428.....	415
Philomath College v. Wyatt (Or.), 31 Pac. 206.....	563
Philomath College v. Wyatt, 27 Or. 390, 37 Pac. 1022, 26 L. R. A. 68	563
Phinizy v. Augusta & K. R. Co., 56 Fed. 273.....	284, 452
Phinizy v. Guernsey, 111 Ga. 346, 78 Am. St. Rep. 207, 36 S. E. 796	1389, 1391
Phinney v. Johnson, 15 S. C. 158.....	1168
Phoenix v. Clark, 6 N. J. Eq. 447	816
Phoenix F. & M. Co. v. North River Construction Co., 33 Hun, 156	306
Phoenix Ins. Co. v. Continental Ins. Co., 14 Abb. Pr., N. S., 266..	504
Phoenix Ins. Co. v. Schultz, 80 Fed. 337, 25 C. C. A. 453.....	353
Phoenix Warehousing Company v. Badger, 67 N. Y. 294, 299....	379
Piatt v. Seif, 207 Pa. St. 614, 57 Atl. 68.....	1351
Pick v. Cardwell, 2 Beav. 137.....	1193
Pickens v. Dent, 106 Fed. 653, 45 C. C. A. 522.....	1079
Pickens v. Miller, 83 N. C. 543.....	1477
Pickering v. Bishop of Ely, 2 Younge & C. Ch. 249.....	1275
Pickering v. Kimpton, Toth. 39.....	1172
Pickering v. Pickering, 63 N. H. 468, 3 Atl. 744.....	1212
Pickering v. Stephenson, L. R. 14 Eq. 322.....	542
Pickett v. Bates, 3 La. Ann. 627.....	1479
Pickett v. Ferguson, 45 Ark. 177, 55 Am. Rep. 545.....	32, 1127
Pickett v. Russell, 42 Fla. 116, 634, 28 South. 764.....	674, 675
Pico v. Cohn, 91 Cal. 129, 25 Am. St. Rep. 159, 25 Pac. 970, 27 Pac. 537, 13 L. R. A. 336.....	1103
Pico v. Columbet, 12 Cal. 414, 73 Am. Dec. 550.....	1522
Pidecock v. Harrington, 64 Fed. 821.....	1052
Pidecock v. Swift, 51 N. J. Eq. 405, 27 Atl. 470.....	1162
Pidding v. How, 8 Sim. 477.....	1000
Piedmont & C. R. Co. v. Speelman, 67 Md. 260, 10 Atl. 77, 293..	766
Piedmont Land Imp. Co. v. Piedmont F. etc. Co., 96 Ala. 389, 11 South. 332	1157
Pier v. Fond du Lac, 38 Wis. 470.....	1234
Pier v. Fond du Lac, 53 Wis. 421, 10 N. W. 686.....	1230
Pierce v. Covert, 39 Wis. 252.....	1534
Pierce v. Equitable Life Assur. Soc., 145 Mass. 56, 12 N. E. 853	1519
Pierce v. Felter, 53 Cal. 18.....	1247
Pierce v. Garrett, 65 Ill. App. 682.....	1505
Pierce v. Higgins, 101 Ind. 178.....	1495
Pierce v. Nichols, 1 Paige Ch. 244.....	1337

Pierce v. Rollins, 83 Me. 172, 22 Atl. 110.....	1200
Pierce v. Trigg, 10 Leigh, 406.....	1534
Piers v. Lambert, 7 Beav. 546, 547.....	1365
Piersol v. Elliott, 6 Pet. 95, 8 L. ed. 332.....	1235
Pierson v. Catlin, 18 Vt. 77	1504
Pierson v. Haddonfield (N. J. Eq.), 57 Atl. 471.....	1507
Pierson v. Van Bergen, 23 Misc. Rep. 547, 52 N. Y. Supp. 890.....	1191
Pierstoff v. Jorges, 86 Wis. 128, 39 Am. St. Rep. 881, 56 N. W. 735	1421
Pignolet v. Bushe, 28 How. Pr. 9	152
Pile v. Pedrick, 167 Pa. St. 296, 46 Am. St. Rep. 677, 31 Atl. 646, 36 Wkly. Not. Cas. 224.....	852
Pilger v. Torrence, 42 Neb. 903, 61 N. W. 99.....	1120
Pillsbury v. Dugan's Admr., 9 Ohio, 120, 34 Am. Dec. 427. 1204, 1206	
Pillow v. Southwest Va. Imp. Co., 92 Va. 144, 53 Am. St. Rep. 804, 23 S. E. 32	32, 1200
Pillsworth v. Hopton, 6 Ves. 51	810, 838
Pineke v. Curtis, 4 Bro. C. C. 329, 331.....	1329, 1537
Pindell v. Quinn, 7 Ill. App. 605.....	1086
Pine v. Mayor etc. N. Y., 103 Fed. 337.....	869, 969
Pine Hill Coal Co. v. Harris, 7 Ky. Law Rep. 519.....	1490
Pingree v. Coffin, 12 Gray, 288	29
Pini v. Roncoroni (1892), 1 Ch. 633.....	147, 148
Pioneer Iron Co. v. City of Negaunee, 116 Mich. 430, 74 N. W. 700	645, 705
Pioneer Land Co. v. Maddux, 109 Cal. 633, 50 Am. St. Rep. 67, 42 Pac. 295	1247
Piper v. Piper, 38 N. J. Eq. 81.....	846
Piro v. Shipley (Pa.), 60 Atl. 325.....	942
Pirtle v. Penn, 3 Dana (Ky.), 247, 28 Am. Dec. 70.....	143
Piscataqua Bridge v. New Hampshire Bridge, 7 N. H. 35.....	1002
Pitkin v. Cowen, 91 Fed. 599.....	343
Pitman v. England (Tenn.), 46 S. W. 464.....	1192
Pitt v. Rodgers, 104 Fed. 387, 43 C. C. A. 600.....	1080
Pittenger v. Pittenger, 208 Ill. 582, 70 N. E. 699.....	1153
Pittsburgh v. Epping etc. Co., 194 Pa. St. 318, 45 Atl. 129.....	923
Pittsburgh & W. E. Pass. Ry. Co. v. Point Bridge Co., 165 Pa. St. 37, 30 Atl. 511, 35 Wkly. Not. Cas. 393, 26 L. R. A. 323....	931
Pittsburgh Carbon Co. v. McMillan, 119 N. Y. 46, 23 N. E. 530, 7 L. R. A. 46.....	372
Pittsburgh, C., C. & St. L. R. Co. v. Board of Pub. Works, 172 U. S. 32, 19 Sup. Ct. 90, 43 L. ed. 354.....	655
Pittsburgh C., C. & St. L. R. Co. v. Crothersville, 159 Ind. 330, 64 N. E. 914.....	925
Pittsburgh, C. C. & St. L. R. Co. v. Harden, 137 Ind. 486, 37 N. E. 324.....	688
Pittsburgh C., C. & St. L. R. R. Co. v. O'Brien, 142 Ind. 218, 41 N. E. 528.....	1250
Pittsburg, Ft. W. & C. Co. v. Cheevers, 149 Ill. 430, 37 N. E. 49, 24 L. R. A. 156	932
Pittsburg S. & W. R. Co. v. Fiske, 123 Fed. 760.....	846
Pittsburg Stove & Range Co. v. Pennsylvania Stove Co., 208 Pa. St. 37, 35 Atl. 77.....	525
Pixley v. Gould, 13 Ill. App. 565.....	1487
Pixley v. Huggins, 15 Cal. 127	1225, 1227, 1238
Place v. Providence, 12 R. I. 1.....	600

Place v. Sweetzer , 16 Ohio, 142.....	1535
Plain v. Roth , 107 Ill. 588	1402
Planet Property etc. Co. v. St. Louis etc. Ry. Co. , 115 Mo. 613, 22 S. W. 616	773
Plant v. Barclay , 56 Ala. 561.....	1226, 1228, 1232
Plant v. Woods (1900), 176 Mass. 492, 79 Am. St. Rep. 330, 57 N. E. 1011, 51 L. R. A. 339.....	1019, 1028, 1031, 1033, 1035
Plaster v. Throne-Franklin Shoe Co. , 123 Ala. 360, 26 South. 225	1444
Platt v. Bently , 11 Am. Law Reg., N. S., 171	371
Platt v. Philadelphia etc. R. Co. , 54 Fed. 569.....	451
Platt v. Philadelphia etc. R. Co. , 65 Fed. 660.....	395
Platt v. Philadelphia etc. R. Co. , 65 Fed. 872.....	435
Platt v. Railroad Co. , 84 Fed. 535, 23 C. C. A. 488.....	392
Platt v. Threadgill , 80 Fed. 192.....	1098
Platt v. Waterbury , 72 Conn. 531, 77 Am. St. Rep. 335, 45 Atl. 154, 48 L. R. A. 691	869, 920, 966
Platte Valley State Bank v. National Livestock Bank , 54 Ill. App. 483, affirmed, and opinion adopted, 155 Ill. 250, 40 N. E. 621	72, 85, 93
Platteville v. Galena etc. R. R. , 43 Wis. 493.....	542
Platto v. Deuster , 22 Wis. 482.....	1082, 1091
Pleak v. Chambers , 7 B. Mon. 570.....	1207
Pleasants v. Glasscock , 1 Smedes & M. Ch. (Miss.) 17.....	1517
Ploughe v. Boyer , 38 Ind. 115.....	878
Plummer v. Talbott , 21 Ky. Law Rep. 30, 50 S. W. 1097.....	1130
Plymouth v. Chestnut Hill etc. Co. , 168 Pa. St. 181, 32 Atl. 19..	923
Plympton v. Malcolmson , L. R. 20 Eq. 37.....	983
Poe v. Howell (N. M.), 67 Pac. 62.....	720
Pohlman v. Dawson , 63 Kan. 471, 88 Am. St. Rep. 249, 65 Pac. 689, 54 L. R. A. 913.....	523
Pohlman v. Lohmeyer , 60 Neb. 364, 83 N. W. 201.....	832
Poindexter v. Burwell , 82 Va. 507.....	31, 32
Poindexter v. Henderson , 1 Miss. (Walk.) 176, 12 Am. Dec. 550..	811
Poindexter v. Waddy , 6 Munf. 418, 8 Am. Dec. 749.....	1095
Pokegama etc. Co. v. Klamath River etc. Co. , 86 Fed. 528.....	850
Pokegama etc. Co. v. Klamath River etc. Co. , 96 Fed. 34....	835, 850
Polhemus v. Emson , 30 N. J. Eq. 405.....	1213
Polk v. Johnson (Ind. App.), 65 N. E. 536; affirmed, 160 Ind. 292, 98 Am. St. Rep. 274, 66 N. E. 752.....	429
Polk v. Pendleton , 31 Md. 118.....	1226, 1232
Polk v. Reynolds , 31 Md. 106.....	1226
Polk v. Rose , 35 Md. 153, 89 Am. Dec. 773.....	1226
Pollard v. Bailey , 20 Wall. 520.....	1472
Pollard v. Clayton , 1 Kay & J. 462.....	1266
Pollard v. Gore , [1901] 1 Ch. 834.....	503
Pollard v. Photographic Co. , 40 Ch. D. 345.....	489, 988
Pollard v. Reardon , 65 Fed. 848, 13 C. C. A. 171, 21 U. S. App. 639	1266
Pollard v. Southern Fertilizer Co. , 122 Ala. 409, 25 South. 169..	270
Pollitt v. Long , 58 Barb. 20.....	884
Pollock v. Farmers' Loan etc. Co. , 157 U. S. 429, 15 Sup. Ct. 673, 39 L. ed. 759.....	547
Pollock v. Lester , 11 Hare, 266.....	870
Pollock v. National Bank , 7 N. Y. 274, 57 Am. Dec. 520.....	1397
Equitable Remedies, Vol. II—109	

Ponca Mill Co. v. Mikesell, 55 Neb. 98, 75 N. W. 46.....	213, 218
Pond, Matter of, 21 Misc. Rep. 114, 46 N. Y. Supp. 999.....	290
Pond v. Cooke, 45 Conn. 126, 29 Am. Rep. 668.....	445
Pond v. Framingham & Lowell R. Co., 130 Mass. 194.....	205, 1455
Pond v. Metropolitan El. R. Co., 112 N. Y. 186, 8 Am. St. Rep. 734, 19 N. E. 487.....	778
Pond v. Sheean, 132 Ill. 312, 23 N. E. 1018, 8 L. R. A. 414.....	1351, 1353, 1357
Pond v. Vermont etc. R. R. Co., 12 Blatchf. 280, Fed. Cas. No. 11,265.....	547
Ponder v. Tate, 96 Ind. 330.....	168, 169
Pool v. Potter, 63 Ill. 533.....	487
Poole v. Falls Road Elec. Ry. Co., 88 Md. 533, 41 Atl. 1069....	770
Poole v. Middleton, 29 Beav. 646.....	1269
Poole v. Shergold, 1 Cox C. C. 273.....	1364, 1366
Pooley v. Buffalo, 124 N. Y. 206, 24 N. E. 624.....	1235
Pope v. Ames, 20 Or. 199, 25 Pac. 393.....	65, 294
Pope v. Bridgewater, 52 W. Va. 252, 43 S. E. 87.....	888, 889
Pope v. Curl, 2 Atk. 342.....	987, 989
Pope v. Daisy Gold Min. Co., 27 Utah, 83, 74 Pac. 426.....	118
Pope v. Mead, 99 N. Y. 201, 1 N. E. 671.....	1171
Pope v. Whitehead, 68 N. C. 199.....	1211
Pope Mfg. Co. v. Gormully, 144 U. S. 224, 12 Sup. Ct. 632, 36 L. ed. 414.....	499
Popper v. Scheider, 7 Abb. Pr., N. S., 56.....	143, 150
Poppitz v. Rognes, 76 Minn. 109, 78 N. W. 964.....	196
Poppleton v. Moores, 62 Neb. 851, 88 N. W. 128.....	605
Porch v. Agnew Co. (N. J. Eq.), 57 Atl. 726.....	400
Portarlington v. Soulby, 3 Mylne & K. 104.....	1125
Port Clinton R. R. Co. v. Cleveland & T. R. Co., 13 Ohio St. 544, 556.....	1280, 1282, 1300
Porter v. Armstrong, 132 N. C. 66, 43 S. E. 542.....	877, 912
Porter v. Frenchman's Bay etc. Co., 84 Me. 195, 24 Atl. 814....	1261
Porter v. Industrial Information Co., 25 N. Y. Supp. 328, 5 Misc. Rep. 263.....	211, 213
Porter v. Kingman, 126 Mass. 141.....	347
Porter v. Lopes, L. R. 7 Ch. Div. 358.....	152
Porter v. Rockford etc. R. Co., 76 Ill. 561 (596).....	676, 684
Porter v. Sabin, 149 U. S. 473, 13 Sup. Ct. 1008, 37 L. ed. 815.....	329, 374, 383
Porter v. Spencer, 2 Johns. Ch. 169.....	1517
Porter v. Whitham, 17 Me. 294.....	884
Porter v. Williams, 9 N. Y. 142, 59 Am. Dec. 519.....	375
Portland Hibernian Ben. Soc. v. Kelly, 28 Or. 173, 52 Am. St. Rep. 769, 42 Pac. 3.....	733, 734
Port Royal etc. R. Co. v. King, 93 Ga. 63, 19 S. E. 809, 24 L. R. A. 730 ..	452
Posey v. Conaway, 10 Ala. 811	1226, 1235
Post v. Campbell, 110 Wis. 378, 85 N. W. 1032	1234
Post v. Dorr, 4 Edw. Ch. 412	167, 180, 181, 184
Post v. Emmett, 40 App. Div. 477, 58 N. Y. Supp. 129	68
Post v. Southern Ry. Co., 103 Tenn. 184, 52 S. W. 301, 55 L. R. A. 481	1052
Post v. West Shore & B. Ry. Co., 123 N. Y. 580, 26 N. E. 7....	1278
Postal Tel. Cable Co. v. Grant, 11 N. Y. Supp. 323, 33 N. Y. St. Rep. 997	721

Postley v. Cain, 4 Sandf. Ch. 509.....	1196
Pott v. Schmucker, 84 Md. 535, 57 Am. St. Rep. 415, 36 Atl. 592, 35 L. R. A. 392	1536
Potter v. Bunnell, 20 Ohio St. 150	330
Potter v. Dear, 95 Cal. 578, 30 Pac. 777.....	1460, 1469
Potter v. Fuller, 2 Fish. Pat. Cas. 251, Fed. Cas. No. 11,327....	982
Potter v. Howe, 141 Mass. 357, 6 N. E. 233.....	894
Potter v. Merchants' Bank, 28 N. Y. 641, 86 Am. Dec. 273..	365
Potter v. Ogden (N. J. Ch.), 59 Atl. 673	1324
Potter v. Potter, 1 Ves. Sr. 436, 440	1379
Potter v. Saginaw etc. Ry. Co., 83 Mich. 285, 47 N. W. 217, 10 L. R. A. 176.....	907
Potter v. Sanders, 6 Hare, 1	1384
Potter v. Spa Spring Brick Co., 47 N. J. Eq. 442, 20 Atl. 852..	347
Potter v. Stone, 70 Miss. 291, 12 South. 208.....	1186
Potter v. Waller, 2 De Gex & S. 410.....	1200
Potter v. Whitney, 1 Low. 87, 3 Fish. Pat. Cas. 77, Fed. Cas. No. 11,341	984
Potts, In re, [1893] 1 Q. B. 648.....	260
Potts v. Alexander, 118 Fed. 885	62
Potts v. Hollen, 177 U. S. 365, 20 Sup. Ct. 654, 44 L. ed. 808, reversing 6 Okla. 696, 52 Pac. 917	851
Potts v. Levy, 2 Drew, 272, 277	882
Potts v. Whitehead, 20 N. J. Eq. 55, 57, 59	1328
Poulder v. Catterson, 127 Ind. 434, 26 N. E. 66	357
Poughkeepsie Gas Co. v. Citizens' Gas Co., 89 N. Y. 493.....	835
Poulk v. Sycamore, 104 Ga. 24, 30 S. E. 417, 41 L. R. A. 772..	634
Poulter v. Poulter, 193 Ill. 641, 61 N. E. 1056	1209
Pound, In re, 42 Ch. Div. 402	231
Pountain, In re, L. R. 37 Ch. Div. 609	139
Powell v. Aiken, 4 Kay & J. 343	830
Powell v. Brinson, 120 Ga. 36, 47 S. E. 499.....	836
Powell v. Campbell, 20 Nev. 232, 19 Am. St. Rep. 350, 20 Pac. 156, 2 L. R. A. 615	15
Powell v. Cheshire, 70 Ga. 357, 48 Am. Rep. 572	826
Powell v. Dayton etc. R. R., 12 Or. 488, 8 Pac. 544; 14 Or. 356, 12 Pac. 665; 16 Or. 33, 8 Am. St. Rep. 251, 16 Pac. 863....	1390
Powell v. Foster, 59 Ga. 790	482
Powell v. Morisey, 98 N. C. 426, 2 Am. St. Rep. 343, 4 S. E. 185..	1144
Powell v. Parkersburg, 28 W. Va. 698.....	748
Powell v. Powell, 48 Cal. 234	1477, 1482, 1483
Powell v. Powell, 27 Ga. 36, 73 Am. Dec. 724	1144
Powell v. Quinn, 49 Ga. 523	164
Powell v. Smith, 8 Johns. 249	1475
Powell v. Weathington, 124 N. C. 40, 32 S. E. 380	1210
Powell v. White, 11 Leigh (Va.), 309	1502
Powell Duffryn Coal Co. v. Taff Vale Ry. Co., L. R. 9 Ch. App. 331	1279
Power v. Bowdle, 3 N. D. 107, 44 Am. St. Rep. 511, 54 N. W. 404, 21 L. R. A. 328	1249
Power v. Rees, 189 Pa. St. 496, 42 Atl. 26	1483
Powers v. Blue Grass Building etc. Assn., 86 Fed. 705.....	225
Powers v. C. H. Hamilton Paper Co., 60 Wis. 23, 18 N. W. 20	247, 248, 375
Powers v. Cray, 7 Ga. 206	1520

Powers v. Rude (Okla.), 79 Pac. 89	1289
Powys v. Blagrave, 4 De Gex, M. & G. 448, 458	806
Poyer v. Village of Des Plaines, 123 Ill. 111, 5 Am. St. Rep. 494, 13 N. E. 819.....	633
Poynter v. Mallory, 20 Ky. Law Rep. 284, 45 S. W. 1042	1437
Poyntz v. Shackelford, 107 Ky. 546, 54 S. W. 855.....	592
Poythress v. Poythress, 16 Ga. 406	159
Pralus v. Pacific etc. Min. Co., 35 Cal. 30	1247
Prather v. Prather's Admr., 11 Gill & J. 110	1077
Pratt, Appeal of, 117 Pa. St. 401, 2 Am. St. Rep. 676, 1 Atl. 878..	991
Pratt v. Boston & Albany R. Co., 126 Mass. 443	1397
Pratt v. Brett, 2 Madd. 62	803
Pratt v. Myers, 63 Hun, 634, 28 Abb. N. C. 460, 18 N. Y. Supp. 466	68
Pratt v. New York etc. R. Co., 90 Hun, 83, 35 N. Y. Supp. 557..	779
Pratt v. Taunton Copper Co., 123 Mass. 110, 25 Am. Rep. 37.....	1397
Pratt v. Tuttle, 136 Mass. 233.....	1522
Pratt v. Worrell (N. J. Eq.), 57 Atl. 450.....	84
Pratt Land & Imp. Co. v. McClain, 135 Ala. 452, 93 Am. St. Rep. 35, 33 South. 185	40
Predohl v. Sullivan, 80 N. W. 903, 59 Neb. 311	1130
Premier Cycle Mfg. Co., In re, 70 Conn. 473, 39 Atl. 800	283
Premier Steel Co. v. McElwaine-Richards Co., 144 Ind. 614, 43 N. E. 876	309, 310, 312
Prentice v. Elliott, 72 Ga. 154	1533
Prentiss Tool & Supply Co. v. Whitman & Barnes Mfg. Co., 88 Md. 240, 41 Atl. 49	297
Prescott v. Hixon, 22 Ind. App. 139, 72 Am. St. Rep. 291, 53 N. E. 391	1139
President etc. Baltimore etc. Road v. United etc. Co., 93 Md. 138, 48 Atl. 723	859
President etc. Louisville etc. Road Co. v. Anderson, 22 Ky. Law Rep. 1626, 61 S. W. 13.....	891
President etc. of Yale College v. Sanger, 62 Fed. 177.....	583
President etc. Village of Waupun v. Moore, 34 Wis. 450, 17 Am. Rep. 446	896
Pressed Steel Car Co. v. Standard Steel Car Co. (Pa.), 60 Atl. 4. 491	
Pressley v. Harrison, 102 Ind. 19, 1 N. E. 188.....	118, 269
Pressley v. Lamb, 105 Ind. 171, 4 N. E. 682.....	269
Pressley v. Roe, 83 Iowa, 545, 50 N. W. 44.....	1355
Press Pub. Co. v. Holahan, 29 Misc. Rep. 684, 62 N. Y. Supp. 872..	620
Preston v. Brant, 96 Mo. 552, 10 S. W. 78.....	1187
Preston v. Colby, 117 Ill. 447, 4 N. E. 375..	1411
Preston v. Horwitz, 85 Md. 164, 36 Atl. 710	45, 55
Preston v. Johnson, 104 Ill. 625	682
Preston v. Kindrick, 94 Va. 760, 64 Am. St. Rep. 777, 27 S. E. 588..	1114
Preston v. Luck, 27 Ch. D. 497	1302
Preston v. Preston, 85 Ky. 16, 2 S. W. 501	828
Price v. Dowdy, 34 Ark. 285	167, 187
Price v. Empire Loan Assn., 75 Mo. App. 551.....	568
Price v. Johnson Co., 15 Mo. 433.....	1075
Price v. Joliet Steel Co., 46 Fed. 107	981
Price v. Price, 23 N. J. Eq. 428	165
Price v. Price, 133 N. C. 494, 45 S. E. 855.....	1259, 1260
Price v. Sisson, 13 N. J. Eq. 168	17

Prickett v. Munck, 74 Wis. 199, 42 N. W. 256.....	1162
Priddie v. Thompson, 82 Fed. 186	595
Priewe v. Wisconsin etc. Co., 103 Wis. 537, 74 Am. St. Rep. 904, 79 N. W. 780.....	922
Primrose v. Bromley, 1 Atk. 89	1482
Prince v. Boston, 148 Mass. 285, 19 N. E. 218.....	468
Prince v. Crocker, 166 Mass. 347, 44 N. E. 446, 32 L. R. A. 610..	621
Prince v. Griffin, 27 Iowa, 514, 521	1342
Prince v. Lamb, 128 Cal. 120, 60 Pac. 689	1313
Prince v. McCoy, 40 Iowa, 533	786
Prince Albert v. Strange, 1 Macn. & G. 25, 1 Hall & T. 1, 2 De Gex & S. 652	988
Prince Mfg. Co. v. Prince's Metallic Paint Co., 135 N. Y. 24, 31 N. E. 990, 17 L. R. A. 129	1000
Pringle v. Eltringham Const. Co., 49 La. Ann. 301, 21 South. 515	221
Pringle v. Woodworth, 90 N. Y. 502	345
Printup v. Mitchell, 17 Ga. 558, 63 Am. Dec. 258	1518
Pritchard v. Fleetwood, 1 Mer. 54.....	187
Pritchett v. Davis, 101 Ga. 236, 65 Am. St. Rep. 298, 28 S. E. 666	493
Probasco v. Probasco, 30 N. J. Eq. 108	203
Proctor v. Bell's Admr., 97 Ky. 98, 30 S. W. 15	1436
Proctor v. Ferebee, 1 Ired. Eq. (36 N. C.) 143, 36 Am. Dec. 34, and note	15
Pronick v. Spirits Dist. Co., 58 N. J. Eq. 97, 42 Atl. 586.....	542
Proprietors of Maine Wharf v. Proprietors etc. Wharf, 85 Me. 175, 27 Atl. 93.....	852, 867, 893
Proprietors of Mills v. Braintree etc. Co., 149 Mass. 478, 21 N. E. 761, 4 L. R. A. 272.....	869, 972
Proskey v. Cumberland Realty Co., 35 Misc. Rep. 50, 70 N. Y. Supp. 1125	516, 855
Prospect Park & C. I. R. R. Co. v. Coney Island & B. R. R. Co. (1894), 144 N. Y. 152, 39 N. E. 17, 26 L. R. A. 610.....	1281, 1315, 1318
Protheroe v. Forman, 2 Swanst. 227, 233.....	1075
Prout v. Starr, 188 U. S. 537, 23 Sup. Ct. 398, 47 L. ed. 584....	586
Providence v. St. Johns Lodge, 2 R. I. 46, 56	1327
Providence Bank v. Wilkinson, 4 R. I. 507, 70 Am. Dec. 160..	69, 92
Providence, F. R. & N. S. Co. v. City of Fall River, 183 Mass. 535, 67 N. E. 647.....	831
Providence Retreat v. Buffalo, 29 App. Div. 160, 51 N. Y. Supp. 654; affirmed, 31 App. Div. 635, 53 N. Y. Supp. 1113.....	723
Provident Life & T. Co. v. Keniston, 53 Neb. 86, 73 N. W. 216	107, 113
Provident Life & T. Co. v. Mills, 91 Fed. 435	1132
Provident Loan Trust Co. v. McIntosh, 68 Kan. 452, 75 Pac. 498.	34
Prudential Assur. Co. v. Knott, L. R. 10 Ch. App. 142	798, 1031, 1056, 1058
Prudential Assur. Co. v. Thomas, L. R. 3 Ch. 74	65, 70, 92
Pruner v. Pendleton, 75 Va. 516, 40 Am. Rep. 738	870
Prusiecke v. Ramzinski (Tex. Civ. App.), 81 S. W. 771..	1294, 1295
Prussian Nat. Ins. Co. v. Chichocky, 94 Ill. App. 168	1110
Prytherch, In re, L. R. 42 Ch. Div. 590	119
Public Clearing-House v. Coyne, 194 U. S. 497, 24 Sup. Ct. 789, 48 L. ed. 1092	584

Public Works v. Columbia College, 17 Wall. 521, 21 L. ed. 687..	1424
Puckett v. McDaniel, 8 Tex. Civ. App. 630, 28 S. W. 360.....	1203
Pudsey Gas Co. v. Corporation of Bradford, L. R. 15 Eq. 167 ..	613
Pueblo Traction & Electric Co. v. Allison, 30 Colo. 337, 70 Pac.	
424	398
Pugh v. Golden etc. Ry. Co., L. R. 15 Ch. D. 330	869, 970
Pugh v. Spicknall, 43 Or. 489, 73 Pac. 1020, 74 Pac. 485 ..	1348, 1351
Pullan v. Cincinnati etc. R. Co., 4 Biss. 47, Fed. Cas. No. 11,461	
.....	107, 115, 251
Pulley v. Pass, 123 N. C. 168, 31 S. E. 478	1490
Pulliam v. Osborne, 17 How. 471, 15 L. ed. 154	324
Pulliam v. Pulliam, 10 Fed. 30.....	39
Pullis v. Robison, 73 Mo. 201, 39 Am. Rep. 497	1447
Pullman's Palace-Car Co. v. American Loan & T. Co., 84 Fed. 18,	
28 C. C. A. 263	423
Pulteney v. Shelton, 5 Ves. 259, note	803, 807
Purcell v. East Grand Forks, 91 Minn. 486, 98 N. W. 351.....	625
Purcell v. Miner, 4 Wall. 513, 18 L. ed. 435	1348, 1350
Purdy v. Collyer, 26 N. Y. App. Div. 338, 49 N. Y. Supp. 665..	1229
Purdy v. Manhattan El. R. Co., 36 N. Y. St. Rep. 43, 13 N. Y.	
Supp. 295	779
Purdy v. Purdy, 18 App. Div. 310, 46 N. Y. Supp. 215.....	1197
Purnell v. Page, 133 N. C. 125, 45 S. E. 534	725
Purnell v. Vaughan, 77 N. C. 268	569
Purviance v. Edwards, 17 Fla. 140	1095
Puryear v. Sanford, 124 N. C. 276, 32 S. E. 685	834
Pusey v. Miller, 61 Fed. 401	95
Pusey v. Pusey, 1 Vern. 273	1263, 1264
Pustet v. Flannelly, 60 How. Pr. 67	68, 101
Puterbaugh v. Puterbaugh, 131 Ind. 288, 30 N. E. 519, 15 L. R.	
A. 431	1244, 1348, 1355
Putnam v. Grand Rapids, 58 Mich. 416, 25 N. W. 330	625
Putnam v. Jacksonville, L. & St. L. Ry. Co., 61 Fed. 440.....	252
Putnam v. Keystone Bottle Stopper Co., 38 Fed. 234.....	982
Putnam v. McAllister (Sup. Ct.), 57 N. Y. Supp. 404	184
Putnam v. Ruch, 54 Fed. 216	546
Putnam Co. Commissioners v. Krauss, 53 Ohio St. 628, 42 N. E.	
831	728
Putney v. Bright, 106 Ga. 199, 32 S. E. 107	821
Putney v. Waymire, 66 Fed. 385	1426
Pyrke v. Waddingham (1850), 10 Hare, 1	1322

Q

Quarl v. Abbott, 102 Ind. 233, 52 Am. Rep. 662, 1 N. E. 476	
.....	118, 1429
Quartz Hill Con. Min. Co. v. Beall, 20 Ch. D. 501.....	1058
Queen Fire Ins. Co. v. State, 86 Tex. 250, 24 S. W. 397, 22 L. R.	
A. 483.....	1051
Queensbury v. Shebbeare, 2 Eden, 329.....	987
Quebec Bank v. Weyand, 30 Ohio St. 126.....	1156
Quimby v. Cheeseman, 4 Sandf. Ch. 405.....	167, 176
Quimby v. Slipper, 7 Wash. 475, 38 Am. St. Rep. 899, 35 Pac.	
116.....	1132
Quimby v. Wood, 19 B. I. 571, 35 Atl. 149.....	647, 738

Quincy, M. & P. R. Co. v. Humphreys, 145 U. S. 82, 12 Sup. Ct. 787, 36 L. ed. 632.....	392, 413
Quinn v. Brittain, 3 Edw. Ch. (N. Y.) 314.....	190
Quinn v. Green, 1 Ired. Eq. 229, 36 Am. Dec. 46.....	94
Quinn v. Leathem, [1901] App. Cas. 495.....	
.....1009, 1011, 1012, 1014, 1016, 1017, 1018, 1024, 1039	
Quinn v. Patton, 2 Ired. Eq. 48.....	94
Quinn v. People, 45 Ill. App. 547.....	1434
Quinn v. Quinn, 5 S. D. 328, 49 Am. St. Rep. 875, 58 N. W. 808.....	1358
Quinnipiac Brewing Co. v. Fitzgibbons, 73 Conn. 191, 47 Atl. 128.....	1398
Quinton v. Burton, 61 Iowa, 471, 16 N. W. 569.....	763
Quivey v. Butler, 37 Cal. 465.....	1110
Quivey v. Parker, 37 Cal. 465.....	1143

R

Rabe v. Dunlap, 51 N. J. Eq. 40, 25 Atl. 959.....	544
Radeliffe v. Varner, 56 Ga. 222.....	1090
Radeliffe v. Warrington, 12 Ves. Jr. 326, 333.....	1337
Radde v. Norman, L. R. 14 Eq. 348.....	990
Radican v. Buckley, 138 Ind. 582, 38 N. E. 53.....	870
Raffles v. Wichelham, 2 Hurl. & C. 906.....	1302
Raffy v. Shallcross, 4 Madd. 227.....	1365, 1366
Ragan, Estate of, 7 Watts (Pa.), 442.....	1195
Ragen v. Hasegood, [1900] 2 Ch. 388.....	503
Raggett v. Findlater, L. R. 17 Eq. 29.....	991
Ragsdale v. Hagy, 9 Gratt. 409.....	1086
Ragsdale v. Southern Ry. Co., 60 S. C. 381, 38 S. E. 609.....	831
Raht v. Atrill, 106 N. Y. 423, 60 Am. Rep. 456, 13 N. E. 282..	404
Railroad & Telephone Cos. v. Board of Equalizers, 85 Fed. 302..	646
Railroad Co. v. Railroad Co., 38 Ohio St. 614.....	1192
Railway Co. v. Ryan, 31 W. Va. 364, 13 Am. St. Rep. 865, 6 S. E. 924.....	1115
Rainey v. H. C. Frick Coke Co., 73 Fed. 389.....	1209
Raisin Fertilizer Co. v. McKenna, 114 Ala. 274, 21 South. 816.....	1113, 1120
Raleigh v. Goshens, [1898] 1 Ch. 73.....	575
Raleigh etc. Co. v. Glendon etc. Co., 112 N. C. 661, 17 S. E. 77..	
.....766, 958	
Ralls v. Prather, 21 Ky. Law Rep. 555, 52 S. W. 800 (denying rehearing of 51 S. W. 318).....	1402
Ralph v. Shiawassee Circuit Judge, 100 Mich. 164, 58 N. W. 837.....	253
Ralston v. Washington & C. R. Ry. Co., 65 Fed. 557.....	283
Ramey v. Counts (Va.), 47 S. E. 1006.....	826
Rampe v. Buehler, 203 Ill. 384, 67 N. E. 796.....	1291
Ramsdell v. Fuller, 28 Cal. 37, 87 Am. Dec. 103.....	1227
Ramsey, Appeal of, 2 Watts, 228, 27 Am. Dec. 301.....	1404
Ramsey v. Erie Ry. Co., 7 Abb. Pr., N. S., 156.....	260, 275
Ramsey v. Shelbyville, 26 Ky. Law Rep. 1102, 83 S. W. 116....	625
Rand v. Rand, 78 N. C. 12.....	193
Randall v. Morrell, 17 N. J. Eq. 343.....	144, 147
Randall v. Pryor, 4 Ohio, 424.....	24
Randle v. Carter, 62 Ala. 95.....	112, 163
Randfield v. Randfield, 3 De Gex, F. & J. 766.....	345
Randolph v. Larned, 27 N. J. Eq. 557.....	402

Randolph v. Tandy, 98 Fed. 939.....	1519
Randolph v. Wheeler, 182 Mo. 145, 81 S. W. 419.....	1384
Ranelagh v. Melton, 2 Drew. & S. 278.....	1328
Ranellaugh v. Hayes, 1 Vern. 189.....	1270
Ranger v. Champion Cotton Press Co., 52 Fed. 609.....	216
Rank v. Garvey, 66 Neb. 767, 92 N. W. 1025, 99 N. W. 666.....	1295
Rankin v. Charless, 19 Mo. 551, 61 Am. Dec. 574.....	858
Rankin v. Collins, 50 Ind. 158.....	1488
Rankin v. Huskisson, 4 Sim. 13.....	515
Rankin v. Rankin, 67 Iowa, 322, 25 N. W. 263.....	572
Rankin v. Southwestern Brewery & Ice Co. (N. M.), 73 Pac. 612.....	543
Rann v. Rann, 95 Ill. 433.....	1209
Ranney v. Bader, 67 Mo. 476, 480.....	648, 711
Ranney v. Peyser, 83 N. Y. 1.....	184
Ransom, In re, 17 Fed. 331.....	1381
Ransom v. Keyes, 9 Cow. 128.....	1490
Raphael v. Thames Val. R. R., L. R. 2 Ch. App. 147.....	1316
Rapier v. London etc. Co., [1893] 2 Ch. 589.....	870
Rapp v. Riehling, 122 Ind. 255, 23 N. E. 68.....	153, 264
Rapp v. Whittier, 113 Cal. 429, 45 Pac. 703.....	1421, 1408
Raritan & D. B. R. Co. v. Delaware & R. C. Co., 18 N. J. Eq. 546.....	1001, 1002
Rateliff v. Adler, 71 Ark. 269, 72 S. W. 896.....	330
Rathbone v. Groh (Mich.), 100 N. W. 588.....	1385
Rathbone v. Wirth, 150 N. Y. 459, 45 N. E. 15, 34 L. R. A. 408.....	619
Ratliff v. Sommers (W. Va.), 46 S. E. 712.....	1352
Rauft v. Reimers (Ill.), 65 N. E. 720.....	526
Rawlings v. Adams, 7 Md. 26.....	1382
Rawnsley v. Trenton Mutual Life Ins. Co., 9 N. J. Eq. 347, 350.....	242
Ray v. First Nat. Bank, 111 Ky. 377, 63 S. W. 762.....	374
Ray v. Peirce, 81 Fed. 881.....	343
Rayley v. Best, 1 Russ. & M. 659.....	1177
Raymond v. Flavel, 27 Or. 219, 40 Pac. 158.....	55
Raymond v. Leinberger, 50 Neb. 815, 70 N. W. 400.....	1419
Raymond v. Russell, 143 Mass. 295, 58 Am. Rep. 137, 9 N. E. 544.....	1056
Raymond v. San Gabriel Val. L & W. Co., 53 Fed. 883, 4 C. C. A. 89.....	1261, 1263, 1334, 1336
Raymond v. Winsette, 12 Mont. 551, 33 Am. St. Rep. 604, 31 Pac. 537.....	869, 970
Raymond Syndicate v. Brown, 124 Fed. 80.....	1267
Rayner v. Lee, 20 Mich. 384.....	1229
Rayner v. Pearsall, 3 Johns. Ch. (N. Y.) 578.....	1516
Rayner v. Preston, L. R. 18 Ch. D. 1.....	1391
Rea v. Longstreet, 54 Ala. 291.....	1227
Rea v. Wilson, 112 Iowa. 517, 84 N. W. 539.....	1144, 1146
Read v. Huff, 40 N. J. Eq. 229.....	1198, 1201
Read v. Society of Stone Masons, [1902] 2 K. B. D. 732.....	1011, 1017
Reade v. Livingston, 3 Johns. Ch. 481, 8 Am. Dec. 420.....	1361
Reading Iron Works, In re, 149 Pa. St. 182, 24 Atl. 202.....	1396
Ready v. Noakes, 29 N. J. Eq. 497, 499.....	1312
Real Del Monte etc. Co. v. Pond Co., 23 Cal. 82.....	840
Real Estate Trust Co. v. Bird, 90 Md. 229, 44 Atl. 1048.....	1396
Reast v. Hughes (Tex. Civ. App.), 33 S. W. 1003.....	1075
Rease v. Kittle (W. Va.), 49 S. E. 150.....	1296

Reavis v. Reavis, 103 Fed. 813.....	53
Receiver of N. J. etc. Ry. v. Nortendyke, 27 N. J. Eq. 658.....	1506
Receivership of New Iberia Cotton Mill Co., In re, 109 La. 875, 33 South. 903.....	286
Rector of St. David's v. Wood, 24 Or. 396, 41 Am. St. Rep. 860, 34 Pac. 18.....	1266
Reddall v. Bryan, 14 Md. 444, 74 Am. Dec. 550.....	482
Redding v. Anderson (Wash.), 79 Pac. 628.....	145
Redfield v. Supervisors, Clarke Ch. (N. Y.) 42.....	75
Redford v. Clark, 100 Va. 115, 40 S. E. 630.....	56
Redick v. City of Omaha, 35 Neb. 125, 52 N. W. 847.....	718
Redin v. Branhan, 43 Minn. 283, 45 N. W. 445.....	1230
Redington v. Cornwell, 90 Cal. 49, 27 Pac. 40.....	1497
Redkey v. Citizens' Natural Gas, etc. Co., 27 Ind. App. 1, 60 N. E. 716.....	549
Redmond v. Packenham, 66 Ill. 434.....	1226, 1233
Red Polled Cattle Club v. Red Polled Cattle Club, 108 Iowa, 105, 78 N. W. 803.....	999
Reed v. Axtell, 84 Va. 231, 4 S. E. 587.....	345
Reed v. Calderwood, 32 Cal. 109.....	1246
Reed v. Cunningham (Iowa), 101 N. W. 1055.....	617
Reed v. Dingess, 56 Fed. 171.....	49
Reed v. Emery, 8 Paige, 417, 35 Am. Dec. 720.....	162
Reed v. Harris, 7 Sim. 639.....	140
Reed v. Holliday, 19 Fed. 325.....	984, 985
Reed v. Kalfsbeck, 147 Ind. 148, 45 N. E. 476, 46 N. E. 466....	1501
Reed v. Reber, 62 Ill. 240.....	1226
Reed v. Tyler, 56 Ill. 288.....	1226
Reemelin v. Mosby, 47 Ohio St. 570, 26 N. E. 717.....	592
Reese, Appeal of, 122 Pa. St. 392, 15 Atl. 807.....	1268
Reese v. McCurdy, 121 Ala. 425, 25 South. 918.....	1527
Reeve v. Parkins, 2 Jacob & W. 390.....	487
Reeves v. Cooper, 12 N. J. Eq. 223, 498.....	1075
Reeves v. Corning, 51 Fed. 774.....	1165
Reeves v. Dickey, 10 Gratt. 138.....	1295
Reeves v. Reeves, 11 Heisk. 669.....	1216
Reeves v. Sprague, 114 N. C. 647, 19 S. E. 707.....	525
Regan v. N. Y. & New Eng. R. R. Co., 60 Conn. 124, 25 Am. St. Rep. 306, 22 Atl. 503.....	1496, 1506
Regenstein v. Atlanta, 98 Ga. 167, 25 S. E. 428.....	676
Regenstein v. Pearlstein, 30 S. C. 192, 8 S. E. 850.....	294, 307
Reichert v. Geers, 98 Ind. 73, 49 Am. Rep. 736.....	870
Reid v. Bradley, 105 Iowa, 220, 74 N. W. 896.....	1145
Reid v. Burns, 13 Ohio St. 49.....	1159
Reid v. Davis, 4 Ala. 83.....	1375
Reid v. Flippen, 47 Ga. 273.....	1480
Reid v. Gifford, Hopk. Ch. 416.....	881
Reilly v. Roberts, 34 N. J. Eq. 299.....	1270
Reinders v. Koppelman, 68 Mo. 482, 30 Am. Rep. 802.....	1207
Reinecke Coal Co. v. Wood, 112 Fed. 477.....	1025
Reinhardt v. Mentasti, L. R. 42 Ch. D. 685.....	925
Reinhardt v. Wendec, 40 Mo. 577.....	1182
Reinhardt v. Sutton, 58 Kan. 726, 51 Pac. 221.....	342
Reisner v. Gulf etc. R. R. Co., 89 Tex. 656, 59 Am. St. Rep. 84, 36 S. W. 53, 33 L. R. A. 171.....	339
Relfe v. Rundle, 103 U. S. 222, 26 L. ed. 337.....	449
Reliance Storage & Warehouse Co., In re, 100 Fed. 619.....	256
Remer v. Mackay, 35 Fed. 86.....	1230

Remer v. McKay, 54 Fed. 432.....	30
Remington Paper Co. v. O'Dougherty, 81 N. Y. 474.....	1226
Renals v. Cowlshaw, L. R. 9 Ch. D. 125.....	505
Rencher v. Anderson, 95 N. C. 208.....	1531
Rendall v. Rendall, 1 Hare, 152.....	140
Renfroe v. Renfroe, 54 Mo. App. 429.....	1078
Renner v. Kannally, 193 Ill. 212, 61 N. E. 1026.....	1096
Renshaw v. First Nat. Bank (Tenn. Ch. App.), 63 S. W. 194....	37, 41
Renton v. Chaplain, 9 N. J. Eq. 62.....	144
Renz v. Drury, 57 Kan. 84, 45 Pac. 71.....	1357
Republican Mountain Silver Mines v. Brown, 7 C. C. A. 412, 24 L. R. A. 776, 58 Fed. 644.....	209, 226
Republic Life Ins. Co. v. Swigert, 135 Ill. 150, 167, 177, 25 N. E. 680, 685, 688, 12 L. R. A. 328.....	374
Requa v. Holmes, 16 N. Y. 198, 26 N. Y. 347.....	1203
Respass v. Breckenridge's Heirs, 2 A. K. Marsh. 581.....	1212
Reuter v. Lowe, 86 Wis. 106, 56 N. W. 472.....	1157
Reuter's Telegram Co. v. Byron, 43 L. J. (Ch.) 661.....	491
Revell v. People, 177 Ill. 468, 69 Am. St. Rep. 257, 52 N. E. 1052, 43 L. R. A. 790.....	928, 972
Reyhold v. Herdman, 2 Del. Ch. 34.....	1270
Reyburn v. Sawyer, 128 N. C. 8, 37 S. E. 954.....	917
Reyburn v. Sawyer, 135 N. C. 328, 102 Am. St. Rep. 555, 47 S. E. 761.....	872, 877, 931
Reyes v. Middleton, 36 Fla. 99, 51 Am. St. Rep. 17, 17 South. 937, 29 L. R. A. 66.....	1056, 1235
Reynolds v. Adden, 136 U. S. 348, 354, 10 Sup. Ct. 843, 34 L. ed. 360.....	445
Reynolds v. Aetna Life Ins. Co., 160 N. Y. 635, 55 N. E. 305, affirming 28 App. Div. 591, 51 N. Y. Supp. 446.....	375
Reynolds v. Bowen, 138 Ind. 434, 36 N. E. 756, 37 N. E. 962....	686
Reynolds v. Everett, 144 N. Y. 189, 39 N. E. 72, 26 L. R. A. 591	1014, 1015, 1026, 1035
Reynolds v. Everett, 67 Hun, 294, 22 N. Y. Supp. 306.....	1039
Reynolds v. Faris, 80 Ind. 14.....	688
Reynolds v. Kirk, 105 Ala. 446, 17 South. 95.....	1227, 1289
Reynolds v. Pettyjohn, 79 Va. 327.....	354
Reynolds v. Stockton, 140 U. S. 254, 11 Sup. Ct. 773, 35 L. ed. 464.....	452, 454
Reynolds v. Waterville, 92 Me. 292, 42 Atl. 553.....	625
Reynolds & Hamby etc. Co. v. Martin, 116 Ga. 495, 42 S. E. 796..	54
Rhawn v. Pierce, 110 Ill. 350, 51 Am. Rep. 691.....	447
Rhea v. Forsyth, 37 Pa. St. 503, 78 Am. Dec. 441.....	83, 946
Rhea v. Jordan, 28 Gratt. 678.....	1350
Rhea v. White, 3 Head, 121.....	1484
Rhode v. Hassler, 113 Mich. 56, 71 N. W. 461.....	1228
Rhode Island Locomotive Works v. Continental Trust Co., 108 Fed. 5, 47 C. C. A. 147.....	413, 420
Rhodes v. Driver, 69 Ark. 606, 86 Am. St. Rep. 215, 65 S. W. 106.	592
Rhodes v. Dunbar, 57 Pa. St. (7 P. F. Smith) 274, 98 Am. Dec. 221.....	871
Rhodes v. Green, 36 Ind. 7.....	1408
Rhodes v. Hilligoss, 16 Ind. App. 478, 45 N. E. 666.....	354, 356, 363
Rhodes v. McNamara (Mich.), 98 N. W. 392.....	831
Rhodes v. Rhodes, 3 Sandf. Ch. (N. Y.) 279.....	1358
Rhorer v. Brockhage, 13 Mo. App. 397.....	1192
Rhorer v. Middleboro Town and Land Co., 19 Ky. Law Rep. 1788, 44 S. W. 448.....	362

Rhymer v. Fretz, 206 Pa. St. 230, 98 Am. St. Rep. 777, 55 Atl. 959.....	932
Rice v. D'Arville, 162 Mass. 559, 39 N. E. 180.....	522
Rice v. Downing, 12 B. Mon. 44.....	1491
Rice v. Eiseman, 122 Ala. 343, 25 South. 214.....	1414
Rice v. Jefferson, 50 Mo. App. 464.....	895
Rice v. Looney, 81 Ill. App. 537.....	825
Rice v. Mayor etc. of City of Macon, 117 Ga. 401, 43 S. E. 773..	676
Rice v. Milwaukee, 100 Wis. 516, 76 N. W. 341.....	624
Rice v. Osgood, 9 Mass. 38.....	1192
Rice v. Rice, 108 Ill. 199.....	1510
Rice v. R. R. Bank, 7 Humph. 39.....	1107
Rice v. Southgate, 16 Gray, 142.....	1480
Rice v. St. Paul etc. R. R. Co., 24 Minn. 467.....	116, 256
Rice v. Tobias, 83 Ala. 384, 3 South. 670.....	1120
Rice v. Tobias, 89 Ala. 214, 7 South. 765.....	1113
Rice v. Waddell, 168 Mo. 99, 67 S. W. 605.....	1170
Rich v. Braxton, 158 U. S. 407, 15 Sup. Ct. 1006, 39 L. ed. 1033.	1237
Rich v. Bray, 37 Fed. 273, 2 L. R. A. 225.....	1194, 1199
Richards, Ex parte, 117 Fed. 658.....	1031, 1043
Richards v. Chave, 12 Ves. 462.....	140
Richards v. Daugherty, 133 Ala. 569, 31 South. 934.....	925
Richards v. Davies, 2 Russ. & M. 347.....	1529
Richards v. Dower, 64 Cal. 62, 28 Pac. 113.....	823, 824
Richards v. Green, 23 N. J. Eq. 536, 538.....	1293
Richards v. Grinnell (Iowa), 18 N. W. 668.....	1532
Richards v. Hatfield, 40 Neb. 879, 59 N. W. 777.....	60, 717
Richards v. Knight, 64 N. J. Eq. 196, 53 Atl. 452....	1321, 1323, 1324
Richards v. People, 81 Ill. 551.....	303, 304, 308
Richards v. Revitt, L. R. 7 Ch. D. 224.....	510
Richards v. Richards, 17 Ind. 636.....	1204
Richards v. Salter, 6 Johns. Ch. 445....	65, 69, 70, 91
Richard's Appeal, 57 Pa. St. 105, 98 Am. Dec. 202.....	904, 907, 938
Richardson v. Gregory, 126 Ill. 166, 18 N. E. 777.....	1532
Richardson v. Hastings, 7 Beav. 323.....	1529
Richardson v. Loree, 94 Fed. 375, 36 C. C. A. 301.....	1097
Richardson v. Michby School Board, [1893] 3 Ch. 510.....	587
Richardson v. Osborne, 82 Fed. 95.....	981
Richardson v. Peacock, 26 N. J. Eq. 40, 28 N. J. Eq. 151, 33 N. J. Eq. 597.....	523
Richardson v. Richardson, 148 Ill. 563, 36 N. E. 608, 26 L. R. A. 305.....	1361
Richardson v. Scott, 47 Miss. 236.....	709
Richardson v. Williams, 49 Me. 558.....	1478
Riches v. Owen, L. R. 3 Ch. App. 820.....	256
Richi v. Chattanooga etc. Co., 105 Tenn. 651, 58 S. W. 646..	920, 929
Richmond v. Bennett, 205 Pa. St. 470, 55 Atl. 17....	946
Richmond v. Crenshaw, 76 Va. 936.....	744
Richmond v. Koenig, 43 Minn. 480, 45 N. W. 1093, 1904.....	1321
Richmond v. Robinson, 12 Mich. 193, 201.....	1337, 1341
Richmond & D. R. Co. v. Blake, 49 Fed. 904.....	662
Richmond Enquirer Co. v. Robinson, 24 Gratt. 548.....	1077
Richmond Mfg. Co. v. Atlantic etc. Co., 10 R. I. 106, 14 Am. Rep. 658.....	912, 925
Richmond Nat. Gas Co. v. Clawson, 155 Ind. 659, 58 N. E. 1049, 51 L. R. A. 744.....	1063
Richter v. Blasingame, 42 Pac. 1077.....	1499

Richter v. Cummings , 60 Pa. St. 441.....	1502
Richter v. Henningsan , 110 Cal. 530.....	1490
Richter v. Journeyman Tailors' Union , 24 Wkly. L. Bul. 189....	1056
Richter v. Kabat , 114 Mich. 575, 72 N. W. 600.....	857
Rickard v. Caton College Co. , 88 Minn. 242, 92 N. W. 958.....	996
Rickard v. Tavior , 122 Fed. 931, 59 C. C. A. 455,.....	1328, 1334
Rickcords v. Hammond , 67 Fed. 380.....	663
Ricketts v. Crewdson (Wyo.) , 79 Pac. 1042.....	759
Ricketts v. Spraker , 77 Ind. 371.....	686, 689
Rickey v. Williams , 8 Wash. 479, 36 Pac. 480.....	628
Ricks v. Bassett , 68 Miss. 250, 8 South. 514.....	1229
Ricks v. Richardson , 70 Miss. 424, 11 South. 935.....	1128
Rico v. Snider , 134 Fed. 953.....	602
Riddick v. Parr , 111 Iowa, 733, 82 N. W. 1002.....	1412
Riddle v. Charlestown , 43 W. Va. 796, 28 S. E. 831.....	747
Riddle v. Whitehill , 135 U. S. 621, 10 Sup. Ct. 924, 34 L. ed. 282..	1532
Ridenbaugh v. Thaver (Idaho) , 80 Pac. 229.....	1263, 1266
Rideout v. Knox , 148 Mass. 368, 12 Am. St. Rep. 560, 19 N. E. 390, 2 L. R. A. 81.....	900, 901
Rider v. Bagley , 84 N. Y. 461.....	108, 172, 181
Rider v. Kidder , 10 Ves. Jr. 360, 368.....	1415
Ridge v. Manker (C. C. A.) , 132 Fed. 599.....	329, 334
Ridgeway v. Bank of Tennessee , 11 Humph. 523.....	1113, 1121
Ridgeway v. Newbold , 1 Harr. (Del.), 385.....	1171
Ridley v. McNairy , 2 Humph. 174.....	1364
Ridout v. Fowler , [1904] 1 Ch. 658.....	298
Riedeman v. Mt. Morris etc. Co. , 56 App. Div. 23, 67 N. Y. Supp. 391.....	908
Riegel v. American Life Ins. Co. , 140 Pa. St. 193, 23 Am. St. Rep. 225, 21 Atl. 392, 11 L. R. A. 857.....	1151
Riesz, Appeal of , 73 Pa. St. 485.....	1369
Rigby v. Great West Ry. , 2 Phill. Ch. 44.....	531, 881, 884
Rigdon v. Shirk , 127 Ill. 412, 19 N. E. 698.....	1223
Rigdon v. Walcott , 141 Ill. 649, 31 N. E. 158.....	1165
Riggin v. Hilliard , 56 Ark. 476, 35 Am. St. Rep. 113, 20 S. W. 402.....	1422 1423, 1425, 1493
Riggins v. Thompson , 30 Tex. Civ. App. 242, 70 S. W. 578.....	594
Riggles v. Erney , 154 U. S. 244, 14 Sup. Ct. 1083, 38 L. ed. 976..	1356
Riggs v. Johnson Co. , 6 Wall. 166, 18 L. ed. 768.....	1081
Riggs v. Polk , 3 Tex. Civ. App. 179, 21 S. W. 1013.....	60
Rigney v. Tacoma L. & W. Co. , 9 Wash. 576, 38 Pac. 147, 26 L. R. A. 425.....	50, 968
Riker v. Darke , 4 Edw. Ch. 668.....	1197
Riley v. Charleston Union Station Co. , 67 S. C. 84, 45 S. E. 149....	769
Riley v. Haworth , 30 Ind. App. 377, 64 N. E. 928.....	1354
Riley v. Pehl , 23 Cal. 70.....	1226
Riley v. Western Union Tel. Co. , 47 Ind. 511.....	687
Rindge v. Baker , 57 N. Y. 209, 15 Am. Rep. 475.....	1486
Rinlev v. McGavie , 120 Iowa. 52, 94 N. W. 452.....	406
Ripley v. Seligman , 88 Mich. 177, 50 N. W. 143.....	41
Ripon v. Hobart , 3 Mylne & K. 169, Cooper temp. Brougham, 333.....	883, 887, 915, 917, 929. 973
Rippe v. Stogdill , 61 Wis. 38, 20 N. W. 645.....	1521
Ripple v. Kuehne (Md.) , 60 Atl. 464.....	45
Risebe v. Texas Transportation Co. , 27 Tex. Civ. App. 33, 66 S. W. 324.....	773
Risher v. Roush , 2 Mo. 95, 22 Am. Dec. 442.....	1109

Risk v. Kansas T. & Bkg. Co. , 58 Fed. 45.....	288
Rissner v. Railway Co. , 89 Tex. 656, 59 Am. St. Rep. 84, 36 S. W. 53, 33 L. R. A. 171.....	295
Ritchie v. Sayers , 100 Fed. 520.....	37
Rittenhouse v. Levering , 6 Watts & S. (Pa.) 190.....	1495, 1509
Ritter v. Patch , 12 Cal. 298.....	667
Ritterhoff v. Puget Sound Nat. Bank , 29 Fed. 1.....	1154
Riverdale Cotton Mills v. Alabama & G. Mfg. Co. , 111 Fed. 431.....	1079
Riverdale Cotton Mills v. Alabama & G. Mfg. Co. (U. S.) , 25 Sup. Ct. 629.....	1079
Riverdale Park Co. v. Westcott , 74 Md. 311, 28 Am. St. Rep. 249, 22 Atl. 270.....	936, 937, 948, 949
Riverside v. MacLean , 210 Ill. 308, 102 Am. St. Rep. 164, 71 N. E. 408.....	631, 637
Riverside & A. Ry. Co. v. City of Riverside , 118 Fed. 736.....	637
Rives v. Morris , 108 Ala. 527, 18 South. 743.....	44
Roach v. Duckworth , 61 How. Pr. 128.....	1111
Roach v. Glos , 181 Ill. 440, 54 N. E. 1022.....	179, 183
Roanoke v. Bolling 101 Va. 182, 43 S. E. 343.....	633
Roath v. Driscoll , 20 Conn. 533, 538, 52 Am. Dec. 352.....	882, 883, 898
Robards v. Clayton , 48 Mo. App. 608.....	95
Robb v. Halsey , 11 Smedes & M. 140.....	1077
Robb v. Vos , 155 U. S. 13, 15 Sup. Ct. 4, 39 L. ed. 52.....	1117
Robberson v. Crow , 3 Ind. Ter. 174, 53 S. W. 534.....	1113, 1120
Roberson v. Rochester Folding Box Co. , 171 N. Y. 538, 89 Am. St. Rep. 828, 64 N. E. 442, 59 L. R. A. 478.....	1059, 1060
Roberts v. Albany etc. R. R. Co. , 25 Barb. 662.....	1452
Roberts v. Bradfield , 12 App. D. C. 453.....	611
Roberts v. Eberhardt, Kay , 148.....	143, 144
Roberts v. Fargo , 10 N. D. 230, 86 N. W. 726.....	610
Roberts v. Louisville , 92 Ky. 95, 36 Am. St. Rep. 449, note, 17 S. W. 216.....	604, 610, 616
Roberts v. Mayor , 5 Abb. Pr. 41.....	601, 617
Roberts v. McCarty , 9 Ind. 18, 68 Am. Dec. 604.....	1189
Roberts v. McFaddin, Weis, and Kyle , 32 Tex. Civ. App. 47, 74 S. W. 105.....	1366, 1367
Roberts v. New York El. R. Co. , 128 N. Y. 455, 28 N. E. 486, 13 L. R. A. 499.....	781
Roberts v. New York El. R. Co. , 155 N. Y. 31, 49 N. E. 262....	781
Roberts v. Parker , 14 S. Dak. 323, 85 N. W. 591.....	168
Roberts v. Scull , 58 N. J. Eq. 396, 43 Atl. 583.....	483
Roberts v. Templeton (Or.) , 80 Pac. 481.....	1349
Roberts v. Van Horne , 21 App. Div. 369, 47 N. Y. Supp. 448....	68
Roberts v. Vest , 126 Ala. 355, 28 South. 412.....	920, 969
Roberts v. Washington Nat. Bank , 9 Wash. 12, 37 Pac. 26.....	115, 263, 268
Robertson v. Burrell , 110 Cal. 568, 42 Pac. 1086.....	1533
Robertson v. Deatherage , 82 Ill. 511.....	1482
Robertson v. Hill , 6 Fish. Pat. Cas. 465, Fed. Cas. No. 11,925....	982
Robertson v. Lewie (Conn.) 59 Atl. 409.....	970
Robertson v. Meyer (N. J.) , 45 Atl. 983.....	946
Robertson v. Robertson , 2 Swan, 201.....	1186, 1194, 1209, 1211
Robertson v. Skelton , 12 Beav. 260.....	1390
Robertson v. Staed , 135 Mo. 135, 58 Am. St. Rep. 569, 36 S. W. 610, 33 L. R. A. 203.....	445
Robeson v. Pittenger , 2 N. J. Eq. (1 H. W. Green) 57, 32 Am. Dec. 412.....	958

Robinet v. Robinett's Heirs (Va.), 19 S. E. 845.....	57
Robinson v. Atlantic & G. W. Ry. Co., 66 Pa. St. 160....	286, 309, 314
Robinson v. Baker, 47 Mich. 619, 11 N. W. 410.....	1192
Robinson v. Baugh, 31 Mich. 290, 292.....	884
Robinson v. Clapp, 67 Conn. 538, 52 Am. St. Rep. 298, 35 Atl. 504.....	907
Robinson v. Davis, 11 N. J. Eq. 302, 69 Am. Dec. 591.....	1100
Robinson v. Dickey, 143 Ind. 205, 52 Am. St. Rep. 417, 42 N. E. 679.....	1183, 1186, 1199
Robinson v. Dickey, 143 Ind. 214, 42 N. E. 638.....	276
Robinson v. Heuer, 67 L. J. Ch. 644, [1898] 2 Ch. 451, 79 L. J., N. S., 281, 47 Week. Rep. 34.....	527, 536
Robinson v. Kampmann, 5 Tex. Civ. App. 605, 24 S. W. 529....	41, 57
Robinson v. Kind, 23 Nev. 330, 47 Pac. 1, 977.....	27, 28
Robinson v. Lord Byron, 1 Brown C. C. 588.....	919, 1068
Robinson v. Mills, 25 Mont. 391, 65 Pac. 114.....	341, 383
Robinson v. Moses (Va.), 34 S. E. 48.....	1173
Robinson v. Pickering, L. R. 16 Ch. D. 371, 660.....	493
Robinson v. Robinson, 123 N. C. 136, 31 S. E. 371.....	494
Robinson v. Russell, 24 Cal. 467.....	816
Robinson v. Taylor, 42 Fed. 803.....	140, 278
Robinson v. Texas Pine Land Assn. (Tex. Civ. App.), 40 S. W. 843.....	1032
Robinson v. Wilmington, 25 U. S. App. 144, 65 Fed. 856, 13 C. C. A. 177.....	656
Robinson v. Wingate (Tex. Civ. App.), 80 S. W. 1067.....	589
Robinson v. Worley, 19 Ky. Law Rep. 791, 42 S. W. 95.....	163
Robinson v. Cleveland City R. Co., 7 Ohio Dec. 312.....	212
Robson v. Du Bose, 79 Ga. 72, 4 S. E. 329.....	99
Robson v. Edwards, [1893] 2 Ch. 146.....	941, 963
Robson v. Whittingham, L. R. 1 Ch. App. 442.....	942, 944
Roby v. City of Chicago (Ill.), 74 N. E. 768.....	602
Roby v. Title G. & T. Co., 166 Ill. 336, 46 N. E. 1110.....	281
Rochat v. Gee, 137 Cal. 497, 70 Pac. 478.....	390
Rochester v. Erickson, 46 Barb. 92.....	879, 980, 927
Rochester v. Walters, 27 Ind. App. 194, 60 N. E. 1101.....	795, 896
Rochester & L. O. Water Co. v. City of Rochester, 176 N. Y. 36, 68 N. E. 117.....	638
Rochester Loan & Bank Co. v. Morse, 181 Ill. 64, 54 N. E. 628..	1205
Rockefeller v. Taylor, 28 Misc. Rep. 460, 59 N. Y. Supp. 1038....	620
Rock Hill Cotton Factory Co., In re, 68 S. C. 436, 47 S. E. 728.....	1505, 1511
Rockingham Ten Cent Savings Bank v. Portsmouth, 52 N. H. 17..	719
Rock Island & P. R. Co. v. Dimick, 144 Ill. 628, 32 N. E. 291, 19 L. R. A. 105.....	533, 1289
Rock Island & P. R. Co. v. Johnson, 204 Ill. 488, 68 N. E. 549..	771
Rockwell v. Bowers, 88 Iowa, 88, 55 N. W. 1.....	766
Rockwell v. Bowerin, 45 N. Y. 166, 8 Abb. Pr., N. S., 330.....	364
Rockwell v. Morgan, 13 N. J. Eq. 384.....	1167
Rockwell v. Portland Sav. Bank, 31 Or. 431, 50 Pac. 566.....	436
Rodbourn v. Utica, I. & E. R. Co., 28 Hun, 369.....	244
Rodgers v. Pitt, 129 Fed. 932.....	970
Rodgers v. Rodgers, 11 Barb. 595.....	818
Rodman v. Harvey, 102 N. C. 1, 8 S. E. 888.....	195
Rodriguez v. Buckley (Tex. Civ. App.), 30 S. W. 1123.....	1133
Roebeling Sons' Co. v. First Nat. Bank, 30 Fed. 744.....	832

Rogers, <i>In re</i> , 125 Fed. 169, 60 C. C. A. 567.....	256
Rogers v. Ashbridge, 23 Pa. Co. Ct. 492, 9 Pa. Dist. 195.....	840
Rogers v. Blum, 56 Tex. 1.....	1402
Rogers v. Castle, 51 Minn. 428, 53 N. W. 651.....	1142
Rogers v. Challis, 27 Beav. 175.....	1270
Rogers v. Chippewa Circuit Judge (Mich.), 97 N. W. 154.....	342
Rogers v. Common Council, 123 N. Y. 173, 25 N. E. 274, 9 L. R. A. 579.....	619
Rogers v. Dougherty, 20 Ga. 271.....	261
Rogers v. Evarts, 17 N. Y. Supp. 264.....	1014, 1015, 1026
Rogers v. Haines, 96 Ala. 586, 11 South. 651.....	381, 441
Rogers v. Haines, 103 Ala. 198, 15 South. 606.....	441
Rogers v. John Week etc. Co., 117 Wis. 5, 93 N. W. 821.....	870
Rogers v. Lafayette Agricultural Works, 52 Ind. 296.....	547
Rogers v. Leseur Co., 57 Minn. 434, 59 N. W. 488.....	624
Rogers v. Meyers, 68 Ill. 92.....	1402
Rogers v. Nowell, 3 De Gex, M. & G. 614.....	990
Rogers v. O'Brien, 1 App. Div. 397, 37 N. Y. Supp. 358.....	620
Rogers v. Parker, 1 Hughes, 148, Fed. Cas. No. 12,018....	1077, 1078
Rogers v. Riley, 80 Fed. 759.....	439
Rogers v. Rogers (Tenn. Ch. App.), 42 S. W. 70.....	277
Rogers v. Rogers Locomotive Co., 62 N. J. Eq. 111, 50 Atl. 10..	401
Rogers v. Southern Pine Co., 21 Tex. Civ. App. 48, 51 S. W. 26	168, 169
Rogers & Baldwin Co v. Cleveland Building Co., 132 Mo. 442, 53 Am. St. Rep. 494, 34 S. W. 57, 31 L. R. A. 335.....	325
Rogers Locomotive etc. Works v. Erie Rv. Co., 20 N. J. Eq. 379..	1069
Rogers Mfg. Co. v. Rogers, 58 Conn. 356, 20 Atl. 467, 18 Am. St. Rep. 278, 7 L. R. A. 779.....	521, 1275
Rolfe v. Gregory, 4 De Gex, J. & S. 576.....	53
Rolfe v. Rolfe, 15 Sim. 88.....	497, 523
Roller v. Holly, 176 U. S. 398, 20 Sup. Ct. 410, 44 L. ed. 520....	28
Rollins v. Henry, 77 N. C. 469.....	113, 154
Rollins v. Rice, 60 Minn. 358, 62 N. W. 325.....	202
Rollins v. Taber, 25 Me. 144.....	1488
Rolt v. Lord Somerville, 2 Eq. Cas. Abr. 759..	811, 812, 814, 815, 816
Romaine v. Chauncey, 129 N. Y. 566, 26 Am. St. Rep. 544, 29 N. E. 826, 14 L. R. A. 712.....	1418
Romaine v. Hendrickson's Exrs., 24 N. J. Eq. 231.....	1450
Rome W. & O. R. R. Co. v. Smith, 39 Hun, 332.....	721
Rosen v. Carlson, 46 App. Div. 233, 47 App. Div. 638, 62 N. Y. Supp. 157.....	522
Roosevelt v. Draper, 23 N. Y. 318.....	618
Root v. L. S. & M. S. Ry. Co., 105 U. S. 189, 26 L. ed. 975.....	978
Roots v. Cohen (Miss.), 12 South. 593.....	1119
Ropes v. Jennerson (Fla.), 34 South. 955.....	1232
Ropes v. Upton, 125 Mass. 258.....	523, 536, 537
Rorer v. Holston Nat. B. & L. Assn. (W. Va.), 46 S. E. 1018....	567
Rorke v. Kings Co. El. R. Co., 22 App. Div. 511, 48 N. Y. Supp. 42.....	779
Rose v. Baker, 99 N. C. 323, 5 S. E. 919.....	299
Rose v. Bevan, 10 Md. 466, 69 Am. Dec. 170....	191
Rose v. Cunyngham, 11 Ves. 550, 554.....	1379
Rose v. Dunklee, 12 Colo. App. 403, 56 Pac. 342.....	1441
Rose v. Durham, 10 Okla. 373, 61 Pac. 1100.....	732
Roseboom v. Whittaker, 132 Ill. 81, 23 N. E. 339.....	290

Rosehill Cemetery Co. v. Kern, 147 Ill. 483, 35 N. E. 240....	681, 682
Roselle v. Farmers' Bank, 119 Mo. 84, 24 S. W. 744.....	65
Rosebaum v. Foss, 4 S. D. 184, 56 N. W. 114.....	1229, 1246
Rosenberg v. Moore, 11 Md. 376.....	199
Rosenberger v. Miller, 1 Mo. App. 640, 61 Mo. App. 422.....	836
Rosenheimer v. Standard etc. Co., 39 App. Div. 482, 57 N. Y. Supp. 330.....	921
Rosenkrans v. White, 7 Lans. 486.....	1206
Rosenwald v. Middlebrook (Mo.), 86 S. W. 200.....	1261
Rosenzweig v. Thompson, 66 Md. 593, 8 Atl. 659.....	1530
Ross v. Banta, 140 Ind. 120, 34 N. E. 865, 39 N. E. 732.....	1124
Ross v. Buchanan, 13 Ill. 55.....	1089
Ross v. Butler, 19 N. J. Eq. 294, 97 Am. Dec. 654.....	870, 880, 890
Ross v. Cobb, 48 Ill. 111.....	1201
Ross v. Cook (Kan.), 80 Pac. 38.....	1354
Ross v. Cox, 69 Ill. App. 430.....	1120
Ross v. Duggan, 5 Colo. 85.....	1398, 1399
Ross v. Elizabeth R. R. Co., 2 N. J. Eq. 422.....	788
Ross v. Fort Wayne 63 Fed. 466, 11 C. C. A. 288.....	978
Ross v. Harper, 99 Mass. 175.....	1086
Ross v. Heckman, 84 Fed. 6.....	329
Ross v. Howard, 25 Wash. 1, 64 Pac. 794.....	1133
Ross-Meehan Brake Shoe Foundry Co. v. Southern M. I. Co., 72 Fed. 957.....	367
Ross v. Menefee, 125 Ind. 432, 25 N. E. 545.....	1478
Ross v. Page, 11 N. D. 458, 92 N. W. 822.....	1382
Ross v. Payson, 160 Ill. 358, 43 N. E. 399.....	37
Ross v. Portland, 105 Fed. 682.....	664
Ross v. Purse, 17 Colo. 24, 28 Pac. 473.....	1278, 1288, 1289
Ross v. Union Pac. Ry. Co., 1 Woolw. 26, Fed. Cas. No. 12,080.....	1276
Rosser v. Randolph, 7 Port. (Ala.) 238, 31 Am. Dec. 712....	911, 912
Rossiter v. City of Lake Forest, 151 Ill. 489, 38 N. E. 359.....	685
Rossman v. Mitchell, 73 Minn. 198, 75 N. W. 1053.....	362
Rotan v. Springer, 52 Ark. 80, 12 S. W. 156.....	1120
Roth v. Insley, 86 Cal. 134, 24 Pac. 853.....	1225
Rothery v. New York Rubber Co., 24 Hun. 172.....	920, 967
Rothery v. New York Rubber Co., 90 N. Y. 30.....	913
Rothholz v. Schwartz, 46 N. J. Eq. 477, 19 Am. St. Rep. 409, 10 Atl. 312.....	1262, 1270
Rothwell v. Knox County, 62 Neb. 50, 86 N. W. 903.....	715, 716
Rothwell v. Robinson, 44 Minn. 538, 47 N. W. 255.....	215
Roudanez v. New Orleans, 29 La. Ann. 271.....	701
Rounsaville v. Kohlheim, 68 Ga. 668, 45 Am. Rep. 505.....	889
Rounsaville v. McGinnis, 93 Ga. 579, 21 S. E. 123.....	1128
Rouse v. Harry, 55 Kan. 589, 40 Pac. 1007.....	412
Rouse v. Hornsby, 14 C. C. A. 377, 67 Fed. 219.....	411
Rouse v. Martin, 75 Ala. 510, 51 Am. Rep. 463.....	853, 889, 908
Rovelsky v. Brown, 92 Ala. 522, 25 Am. St. Rep. 83, 9 South. 182.....	1534
Rowan v. Reed, 19 Ill. 21.....	1212
Rowe v. Rowe, 61 Kan. 862, 60 Pac. 1049.....	1192
Rowe v. Wood, 2 Jacob & W. 553.....	182
Rowell v. Smith (Wis.), 102 N. W. 1.....	1139
Rowland v. School District, 42 Conn. 30.....	672
Rownd v. State, 152 Ind. 39, 51 N. E. 914, 52 N. E. 395.....	1393

Rowzee v. Pierce, 75 Miss. 846, 65 Am. St. Rep. 625, 23 South. 307, 40 L. R. A. 402.....	942
Royal Baking Powder Co. v. Royal, 122 Fed. 337, 58 C. C. A. 499..	997
Royal Trust Co. v. Washburn, B. & Q. R. Co., 120 Fed. 11, 57 C. C. A. 31.....	404
Royer Wheel Co. v. Miller, 20 Ky. Law Rep. 1831, 50 S. W. 62	528, 1148
Royer Wheel Co. v. Taylor County, 104 Ky. 741, 47 S. W. 876..	699
Royston v. Miller, 76 Fed. 50.....	1185
Royston v. Royston, 13 Ga. 425.....	1216
Roxbury v. Central Vt. R. Co., 60 Vt. 121, 14 Atl. 92.....	336
Rozier v. Griffith, 31 Mo. 171.....	1199, 1213
Rubert v. Brayton, 82 Mich. 632, 46 N. W. 935.....	1245, 1246
Rubie Combination G. M. Co. v. Princess Alice G. M. Co., 31 Colo. 158, 71 Pac. 1121.....	1162
Rucker v. Dooley, 49 Ill. 377, 99 Am. Dec. 614.....	1229
Rudd v. Lascelles, [1900] L. R. 1 Ch. 815.....	1371
Rudland v. Mastie, 77 Fed. 688.....	62
Ruff v. Elkin, 40 S. C. 69, 18 S. E. 220....	1113
Ruffner v. Mairs, 33 W. Va. 655, 11 S. E. 5.....	263, 273
Rugan v. Sebin, 53 Fed. 415, 418, 3 C. C. A. 578, 580, 10 U. S. App. 519, 530.....	34, 35, 37, 55
Ruhlender v. Chesapeake, O. & S. W. R. Co., 33 C. C. A. 299, 91 Fed. 5.....	420
Rule v. Omega Stove etc. Co., 64 Minn. 326, 67 N. W. 60.....	1470
Rumbo v. Gay Mfg. Co., 129 N. C. 9, 39 S. E. 581.....	1240, 1249
Rumfield v. Neal (Tex. Civ. App.), 46 S. W. 262.....	1118, 1119
Rumney v. Detroit & M. Cattle Co., 116 Mich. 640, 74 N. W. 1043.....	215
Rundle v. Life Assn. of America, 10 Fed. 720, 4 Woods, 94.....	449
Runner v. Deviggins, 117 Ind. 238, 36 L. R. A. 645, 46 N. E. 580.....	353
Runner v. Scott, 150 Ind. 441, 50 N. E. 479.....	290
Rupley v. Welch, 23 Cal. 452.....	869, 970
Ruppertsberger v. Clark, 53 Md. 402.....	1078
Rusden v. Pope, L. R. 3 Ex. 269.....	71
Rushville v. Rushville Natural Gas Co., 132 Ind. 575, 28 N. E. 853, 15 L. R. A. 321.....	632
Russ v. Crichton, 117 Cal. 695, 49 Pac. 1043.....	1235
Russel v. Agar, 121 Cal. 396, 66 Am. St. Rep. 35, 53 Pac. 926..	1291
Russell v. Beasley, 72 Ala. 190.....	1184
Russell v. Briggs, 165 N. Y. 500, 59 N. E. 303, 53 L. R. A. 556..	1354
Russell v. Burke, 180 Mass. 543, 62 N. E. 963.....	1443
Russell v. Chicago T. & S. Bank, 139 Ill. 538, 17 L. R. A. 345, 29 N. E. 37.....	376
Russell v. Dayton Coal & Iron Co., 109 Tenn. 43, 70 S. W. 1....	60
Russell v. Deshon, 124 Mass. 342.....	1226
Russell v. East Anglian Ry., 3 Macn. & G. 104.....	302, 303, 304, 309
Russell v. Green, 10 Okla. 340, 62 Pac. 817.....	733
Russell v. Howard, 3 McLean, 489, Fed. Cas. No. 12,156.....	1399
Russell v. Interstate Lumber Co., 112 Mo. 40, 20 S. W. 26.....	1115
Russell v. Kern, 69 Fed. 94, 16 C. C. A. 154.....	978, 979
Russell v. Millett, 20 Wash. 212, 55 Pac. 44.....	309
Russell v. Napier, 80 Ga. 77, 4 S. E. 857.....	955
Russell v. New York Produce Exchange, 27 Misc. Rep. 381, 58 N. Y. Supp. 842.....	1050
Equitable Remedies, Vol. II—110	

Russell v. Russell, 129 Fed. 434.....	60, 1161
Russell v. Tate, 52 Ark. 541, 20 Am. St. Rep. 193, 13 S. W. 130, 7 L. R. A. 180.....	609, 616, 630
Russell v. Texas & P. R. Co., 68 Tex. 646, 5 S. W. 686.....	309, 314
Russia Cement Co. v. Le Page, 147 Mass. 206, 9 Am. St. Rep. 685, 17 N. E. 304.....	468, 990
Rust v. Conrad, 47 Mich. 449, 41 Am. Rep. 730, 11 N. W. 265.....	1298
Rust v. Ware, 6 Gratt. 50, 52 Am. Dec. 100.....	1110
Rutherford v. Douglas, 1 Sim. & St. 111, note.....	140
Rutherford v. Haven, 11 Iowa, 587.....	1333
Rutherford v. Jones, 14 Ga. 521, 60 Am. Dec. 655.....	1184
Rutherford v. Taylor, 38 Mo. 315.....	941
Rutland El. L. Co. v. Marble City El. L. Co., 65 Vt. 377, 36 Am. St. Rep. 869, 26 Atl. 635, 20 L. R. A. 821.....	1065
Rutland Marble Co. v. Ripley, 10 Wall. 339, 358, 19 L. ed. 955.....	1279
Rutter v. Tallis, 5 Sandf. 610.....	294
Rutz v. Calhoun, 100 Ill. 392.....	601, 679
Ryan v. Board of Commissioners, 30 Kan. 185, 2 Pac. 156.....	694
Ryan v. Boyd, 33 Ark. 778.....	1113, 1121
Ryan v. Brown, 18 Mich. 196, 100 Am. Dec. 154.....	575, 576
Ryan v. Central City, 21 Ky. Law Rep. 1070, 54 S. W. 2.....	699
Ryan v. Cudahy, 157 Ill. 108, 48 Am. St. Rep. 305, 41 N. E. 760, 49 L. R. A. 353.....	556
Ryan v. Egan, 26 Utah, 241, 72 Pac. 933.....	1188
Ryan v. Fulghum, 96 Ga. 234, 22 S. E. 940.....	834
Ryan v. Hamilton, 203 Ill. 191, 68 N. E. 781.....	524
Ryan v. Kingsbery, 88 Ga. 361, 14 S. E. 596.....	299, 303, 305
Ryan v. Lamson, 44 Ill. App. 204, affirmed in 153 Ill. 520, 39 N. E. 979.....	72
Ryan v. Mackmath, 3 Brown Ch. 15.....	1152
Ryan v. Maxey, 14 Mont. 81, 35 Pac. 515.....	1408
Ryan v. Morrill, 83 Ky. 352.....	406
Ryan v. Mutual Tontine etc. Assn., [1893] 1 Ch. 116, 128.....	1277, 1279
Ryan v. Parris, 48 Kan. 765, 30 Pac. 172.....	1129
Ryan v. Schwartz, 94 Wis. 403, 69 N. W. 178.....	852
Ryan v. Seaboard & R. R. Co., 89 Fed. 385.....	484
Ryan v. Spieth, 18 Mont. 45, 44 Pac. 403.....	1433
Ryan v. Woodin (Idaho), 75 Pac. 261.....	45
Ryason v. Dunten (Ind.), 73 N. E. 74.....	42
Ryder v. Bateman, 93 Fed. 16.....	109, 154, 155
Ryder v. Benthams, 1 Ves. Sr. 543.....	959, 960
Ryder v. Ryder, 19 R. I. 188, 32 Atl. 919.....	292
Ryerson v. Willis, 81 N. Y. 277.....	1157
Rylands, Ex parte, L. R. 6 Ch. Div. 57.....	256

S

Sabin v. Anderson, 31 Or. 487, 49 Pac. 870.....	1407, 1408, 1410
Sable v. Maloney, 48 Wis. 331, 4 N. W. 479.....	1146
Sablich v. Russell, L. R. 2 Eq. 441.....	67, 93
Sachsel v. Farrer, 35 Ill. App. 277.....	76
Sackett v. New Albany, 88 Ind. 473, 45 Am. Rep. 467.....	601, 625
Sackhoff v. Vandegrift, 98 Ala. 192, 13 South. 495.....	201
Sacramento & Placerville R. Co. v. Superior Court, 55 Cal. 453.....	255
Sacramento Bank v. Pacific Bank, 124 Cal. 147, 71 Am. St. Rep. 36, 56 Pac. 787.....	1506
Sagadahoe Land Co. v. Ewing, 65 Fed. 702, 13 C. C. A. 83, 31 U. S. App. 102.....	47

Sage v. Gloversville, 43 App. Div. 245, 60 N. Y. Supp. 791....	204, 721
Sage v. Memphis etc. R. R. Co., 125 U. S. 361, 8 Sup. Ct. 887, 31 L. ed. 694.....	248, 249, 251
Sage v. Winona & St. P. R. R. Co., 58 Fed. 297, 7 C. C. A. 237, 19 U. S. App. 1.....	59
Saint v. Guerrero, 17 Colo. 448, 31 Am. St. Rep. 320, 30 Pac. 335.....	869, 969
Saint v. Ledyard, 14 Ala. 244.....	1507
Saint v. Welsh, 141 Ind. 382, 40 N. E. 903.....	688
Saint Amand v. Lehman, 120 Ga. 253, 47 S. E. 949.....	971
St. Andrew's Church's Appeal, 67 Pa. St. (17 P. F. Smith) 512, ...	504, 511
Sainter v. Ferguson, 1 Macn. & G. 286.....	537
St. Felix v. Rankin, 3 Edw. Ch. 323.....	1212
St. Helen's Smelting Co. v. Tipping, 11 H. L. Cas. 642.....	893
St. James' Church v. Arrington, 36 Ala. 546, 76 Am. Dec. 332....	889
St. John v. Coates, 63 Hun, 460, 18 N. Y. Supp. 419.....	36
St. John v. McFarlan, 33 Mich. 72, 20 Am. Rep. 671.....	794, 896
St. John's Nat. Bank v. Bingham Tp., 113 Mich. 203, 71 N. W. 588.....	1076
St. Joseph & D. C. R. R. Co. v. Smith, 19 Kan. 225, 231.....	335
St. Louis v. Knopp etc. Co., 104 U. S. 658, 26 L. ed. 883.....	892
St. Louis v. O'Neill Lumber Co., 114 Mo. 74, 21 S. W. 484.....	1449
St. Louis, A. & S. R. Co. v. Hamilton, 158 Ill. 366, 41 N. E. 777	336
St. Louis A. & T. R. Co. v. Whitaker, 68 Tex. 630, 5 S. W. 448	309, 312
St. Louis & S. F. R. Co. v. Apperson, 97 Mo. 301, 10 S. W. 478....	710
St. Louis & S. F. R. Co. v. Gracy, 126 Mo. 472, 29 S. W. 579....	710
St. Louis & S. F. R. Co. v. Lowder, 138 Mo. 533, 60 Am. St. Rep. 565, 39 S. W. 799.....	1115
St. Louis & S. F. R. Co. v. Southwestern T. & T. Co., 121 Fed. 276, 58 C. C. A. 198.....	765, 768
St. Louis Car Co. v. Stillwater St. Ry. Co., 53 Minn. 129, 54 N. W. 1064.....	241
St. Louis K. C. & C. R. Co. v. Dewees, 23 Fed. 519.....	154
St. Louis, K. & S. R. Co. v. Wear, 135 Mo. 230, 36 S. W. 658, 33 L. R. A. 341	262, 275, 428
St. Louis Life Ins. Co. v. Alliance Mut. L. Ins. Co., 23 Minn. 7	101
St. Louis Nat. Bank v. Field, 156 Mo. 306, 56 S. W. 1095.....	180
St. Louis R. Co. v. Northwestern etc. R. Co., 69 Mo. 65....	1001, 1002
St. Louis Safe Deposit & Sav. Bank v. Kennett Estate, 101 Mo. App. 370, 74 S. W. 474.....	870
St. Louis S. W. R. Co. v. Holbrook, 73 Fed. 112, 19 C. C. A. 385.....	341, 411
St. Louis Trust Co. v. Riley, 70 Fed. 32, 16 C. C. A. 610, 36 U. S. App. 100, 30 L. R. A. 456.....	424
St. Louis V. & T. H. R. Co. v. Terre Haute etc. R. Co., 33 Fed. 440....	1161
St. Mary's Gas Co. v. Elk County, 191 Pa. St. 458, 43 Atl. 321....	737
St. Nicholas, The, 49 Fed. 671.....	338
St. Paul Division etc. v. Brown, 11 Minn. 356.....	1259
St. Paul, M. & M. Ry. Co. v. Western Union Tel. Co., 118 Fed. 497, 55 C. C. A. 263.....	789
St. Paul, S. & T. F. R. Co. v. Sage, 49 Fed. 315, 1 C. C. A. 256, 4 U. S. App. 160 (reversing 32 Fed. 821, 44 Fed. 817)....	44, 49

St. Paul Trust Co. v. Mintzer, 65 Minn. 124, 60 Am. St. Rep. 444, 67 N. W. 657, 32 L. R. A. 756.....	204
St. Paul Trust Co. v. St. Paul Globe Pub. Co., 60 Minn. 105, 61 N. W. 813.....	360
St. Patrick's Alliance v. Byrne, 59 N. J. Eq. 26, 44 Atl. 716....	998
St. Regis Paper Co. v. Santa Clara Lumber Co., 55 App. Div. 225, 67 N. Y. Supp. 149, reversing 31 Misc. Rep. 695, 66 N. Y. Supp. 59.....	530
Sales v. Lusk, 60 Wis. 490, 19 N. W. 362.....	108, 168, 172, 183
Salisbury v. Binghampton Pub. Co., 85 Hun, 99, 32 N. Y. Supp. 652.....	1446
Salisbury Mills v. Townsend, 109 Mass. 115.....	73, 92
Salomon v. Hertz, 40 N. J. Eq. 400, 2 Atl. 379.....	490, 531
Salomons v. Laing, 12 Beav. 377.....	542
Salsbury v. Ware, 183 Ill. 505, 56 N. E. 149 (reversing 80 Ill. App. 485).....	53
Salt v. Cooper, L. R. 16 Ch. Div. 544.....	119, 256
Salter v. Ham, 31 N. Y. 321.....	1517
Saltsburg Gas Co. v. Borough of Saltsburg, 138 Pa. St. 250, 20 Atl. 844, 10 L. R. A. 193.....	534
Saltus v. Belford Co., 133 N. Y. 499, 31 N. E. 518, affirming 64 Hun, 632, 18 N. Y. Supp. 619.....	533
Salvin v. North Brancepeth Coal Co., L. R. 9 Ch. App. 705....	893
Sammis v. L'Engle, 19 Fla. 800.....	89
Sammons v. Gloversville, 34 Misc. Rep. 459, 70 N. Y. Supp. 284	853, 909, 916, 967
Sample v. Barnes, 55 U. S. 70, 14 L. ed. 330.....	1077
Sample v. Bridgforth, 72 Miss. 293, 16 South. 876.....	1151
Sample v. Horlacher, 177 Pa. St. 247, 35 Atl. 615.....	1353
Samuel v. Hostetter Co., 118 Fed. 257, 55 C. C. A. 111.....	995
San Antonio v. Sullivan, 23 Tex. Civ. App. 658, 57 S. W. 45....	766
San Antonio & G. S. R. Co. v. Davis (Tex. Civ. App.), 30 S. W. 693.....	247
San Antonio Gas Co. v. State, 22 Tex. Civ. App. 118, 54 S. W. 289.....	245, 246
San Antonio St. Ry. Co. v. Adams (Tex. Civ. App.), 25 S. W. 639.....	549
San Antonio Water Co. v. Bodenhamer etc. Co., 133 Cal. 248, 65 Pac. 471.....	850
Sanborn v. Noekin, 20 Minn. 178.....	1370
Sanborn v. Sinclair, 8 Paige, 373.....	266
Sandage v. Studebaker Bros. Mfg. Co., 142 Ind. 148, 51 Am. St. Rep. 165, 41 N. E. 380, 34 L. R. A. 363.....	1126
Sanderlin v. Baxter, 76 Va. 299, 44 Am. Rep. 165....	936, 941, 947
Sanders v. Devereux, 60 Fed. 311, 8 C. C. A. 629.....	1197, 1200
Sanders v. Logan, 2 Fish. Pat. Cas. 167, Fed. Cas. No. 12,295....	975, 980
Sanders v. Lord Lisle, 4 Irish Eq. 43.....	184
Sanders v. Newton, 140 Ala. 335, 37 South. 340.....	1310
Sanders v. Slaughter, 89 Ga. 34, 14 S. E. 903.....	108
Sanders v. Yonkers, 63 N. Y. 489.....	1225, 1228
Sanders v. Young, 31 Miss. 111.....	1535
Sanderson v. Cockermonth Ry. Co., 11 Beav. 497.....	1278
Sanderson v. Voelcker, 51 Mo. App. 328.....	1095
Sandford v. Sinclair, 8 Paige, 373.....	272
Sands v. Greeley, 83 Fed. 772.....	454

Sandusky v. Faris , 49 W. Va. 150, 38 S. E. 563.....	569
Sanford v. Anderson (Neb.), 95 N. W. 632.....	181
Sanford v. Gregg , 58 Fed. 620.....	660
Sanford v. Poe , 69 Fed. 546, 548, 16 C. C. A. 305, 60 L. R. A. 641.....	646
Sanford v. Sinclair , 8 Paige, 372.....	260
Sanford v. White , 132 Fed. 531.....	1096
Sanford v. Wright , 164 Mass. 85, 41 N. E. 120.....	1426
Sanger v. French , 157 N. Y. 213, 51 N. E. 979.....	1529
Sanger v. Upton , 91 U. S. 56, 23 L. ed. 220.....	1470
Sanitary Reduction Works v. California Reduction Co. , 94 Fed. 693.....	482, 483, 530
San Joaquin etc. Co. v. Stanislaus County , 90 Fed. 516.....	586
San Jose Safe Deposit Bank v. Bank of Madera , 121 Cal. 543, 54 Pac. 85.....	154
San Juan etc. Co. v. Finch , 6 Colo. 214.....	1115
San Pedro & Canon del Agua Co. v. United States , 146 U. S. 120, 13 Sup. Ct. 94, 36 L. ed. 912.....	51
Sanquirico v. Benedetti , 1 Barb. 315.....	518, 519
Santee etc. Co. v. James , 50 Fed. 360.....	846, 848
Sapp v. Roberts , 18 Neb. 299, 25 N. W. 96.....	826
Sarber v. Rankin , 145 Ind. 236, 56 N. E. 225.....	690
Sargent v. Seagrave , 2 Curt. 553, Fed. Cas. No. 12,365.....	984
Sarles v. Sarles , 3 Sandf. Ch. 601.....	803, 805
Sartor v. Schaden (Iowa), 101 N. W. 511.....	994
Sasser v. Olliff , 91 Ga. 84, 16 S. E. 312.....	1096
Satterlee v. Kobbe , 173 N. Y. 91, 65 N. E. 952.....	1198
Satterwhite v. Sherley , 127 Ind. 59, 25 N. E. 1100.....	1252
Sauer v. Kansas , 69 Mo. 46.....	1119
Saunders v. Albritton , 37 Ala. 716.....	1119
Saunders v. Huntington , 166 Mass. 96, 44 N. E. 127.....	1076
Saunders v. Smith , 3 Mylne & C. 711, 728.....	975
Saunders-Clark v. Grosvenor etc. , [1900] 2 Ch. D. 373.....	925
Savage v. Savage , 19 Or. 112, 20 Am. St. Rep. 795, 23 Pac. 890.....	1195
Savage v. Winchester , 15 Gray, 453.....	1491
Savannah A. & G. R. Co. v. Shiels , 33 Ga. 601.....	930
Savannah & O. Canal Co. v. Suburban etc. Co. , 93 Ga. 240, 18 S. E. 824.....	830
Saverios v. Levy , 1 N. Y. St. Rep. 758.....	150
Savery v. King , 5 H. L. Cas. 627, 2 Jur., N. S., 503, 25 L. J. Ch. 482, 4 Wkly. Rep. 571.....	1160
Savidge v. Village of Spring Lake , 112 Mich. 91, 70 N. W. 425.....	610, 629
Savile, Case of , Cas. temp. Talb. 16.....	818
Savile v. Savile , 1 P. Wms. 744.....	1313
Saville v. Tankred , 1 Ves. Sr. 101.....	1264
Savings & Loan Soc. v. Austin , 46 Cal. 417.....	667
Sawyer, In re , 124 U. S. 200, 8 Sup. Ct. 482, 31 L. ed. 402.....	594, 1084
Sawyer v. Hoag , 17 Wall. 610, 21 L. ed. 731.....	1471
Sawyer v. Lyons , 10 Johns. 32.....	1487
Sayers v. Burkhardt , 85 Fed. 246, 29 C. C. A. 137.....	1099
Sayers v. Collyer , L. R. 28 Ch. D. 103.....	508
Sayles v. Nat. Water Purifying Co. , 16 N. Y. Supp. 555, 62 Hun, 618.....	292
Sayre v. Mayor etc. of Newark , 58 N. J. Eq. (13 Dick.) 136, 148, 42 Atl. 1068.....	892, 931

Sayre v. Mayor etc. of Newark , 60 N. J. Eq. 361, 83 Am. St. Rep. 629, 45 Atl. 985.....	926
Sayre v. Tompkins , 23 Mo. 443.....	710
Scanland v. Settle, Meigs (Tenn.) , 169.....	1508
Scannell v. Felton , 57 Kan. 468, 46 Pac. 948.....	380
Scantlin v. Allison , 32 Kan. 376, 4 Pac. 618.....	1212, 1213
Searborough v. Myrick , 47 Neb. 794, 66 N. W. 867.....	27, 1250
Searborough v. Smith , 18 Kan. 399.....	1198
Schaferman v. O'Brien , 28 Md. 565, 92 Am. Dec. 708.....	1441
Schaffner v. Young , 10 N. D. 245, 86 N. W. 733.....	726
Schaible v. Ardner , 98 Mich. 70, 56 N. W. 1105.....	1426
Schall v. Nusbaum , 56 Md. 512.....	932
Scharff v. Meyer , 133 Mo. 428, 54 Am. St. Rep. 672, 34 S. W. 858.....	1402
Scharr v. Camden (N. J. Ch.) , 49 Atl. 817.....	856
Schaub v. Perkinson Bros. Const. Co. , 108 Mo. App. 122, 82 S. W. 1094.....	915
Scheftel v. Hays , 58 Fed. 457, 7 C. C. A. 308, 19 U. S. App. 220.....	34, 36, 54
Schell v. Lowe , 75 Hun, 43, 23 Civ. Proc. Rep. 300, 26 N. Y. Supp. 991.....	69, 101
Sehencke v. Wicks , 23 Utah, 576, 65 Pac. 732.....	1367
Scherck v. Montgomery , 81 Miss. 426, 33 South. 507.....	1396
Schettler v. Ford Howard , 43 Wis. 48.....	749, 751
Scheubert v. Honel , 50 Ill. App. 597 (affirmed 152 Ill. 313, 38 N. E. 913).....	1436
Schiek v. Whitecomb (Neb.) , 94 N. W. 1023.....	32
Schiele v. Thede (Iowa) , 102 N. W. 133.....	1121
Schilcer v. Brock , 124 Ala. 626, 27 South. 473.....	264
Schimpf v. Dime Deposit and Discount Bank , 208 Pa. St. 380, 57 Atl. 767.....	1335
Schindelholz v. Cullum , 55 Fed. 885, 5 C. C. A. 293.....	447, 450
Schlagenhauf v. Craven , 61 N. J. Eq. 232, 47 Atl. 804.....	1446
Schlawig v. Purslow , 59 Fed. 848, 8 C. C. A. 315, 19 U. S. App. 501.....	43
Schleiche v. Markward , 61 Tex. 99.....	1120
Schley v. Dixon , 24 Ga. 273, 71 Am. Dec. 121.....	1428
Schlichter v. Keiter , 156 Pa. St. 119, 27 Atl. 45, 22 L. R. A. 161.....	563
Schmaltz v. York Mfg. Co. , 204 Pa. St. 1, 93 Am. St. Rep. 782, 59 L. R. A. 957, 53 Atl. 522.....	28, 33
Schmidt v. Constans , 82 Minn. 347, 83 Am. St. Rep. 437, 85 N. W. 173.....	1486
Schmidt v. Galveston, H. & S. A. R. Co. (Tex. Civ. App.) , 24 S. W. 547.....	740
Schmidt v. Gayner , 59 Minn. 303, 61 N. W. 333, 62 N. W. 265.....	334
Schmidt v. Louisville & N. R. Co. , 101 Ky. 441, 41 S. W. 1015, 38 L. R. A. 809.....	1281, 1282
Schmidt v. West , 104 Fed. 272.....	1152, 1154
Schmitt v. Dahl , 88 Minn. 506, 93 N. W. 665.....	1142
Schmitz v. Zeh , 91 Minn. 290, 97 N. W. 1049.....	623
Schneider v. Patton , 175 Mo. 684, 75 S. W. 155.....	1443
Schneider v. Reed (Wis.) , 101 N. W. 682.....	1351
Schneider v. Rochester , 160 N. Y. 165, 54 N. E. 721, reversing 33 App. Div. 458, 53 N. Y. Supp. 931.....	769
Schofield v. Ute Coal & Coke Co. , 92 Fed. 269, 34 C. C. A. 334.....	1432, 1434

Schofield v. Wooley , 98 Ga. 548, 58 Am. St. Rep. 315, 25 S. E. 769.....	56
Schone v. Consolidated Bldg. & Sav. Co. , 4 Ohio N. P. 216.....	262
School District v. Ohio Val. Gas. Co. , 154 Pa. St. 539, 25 Atl. 868.....	532
School District v. Price , 23 Or. 294, 31 Pac. 657.....	1174
School Dist. v. Turner , 13 Okla. 71, 73 Pac. 952.....	574
School District v. Waseca Co. , 77 Minn. 167, 79 N. W. 668.....	593
School District v. Weston , 31 Mich. 85.....	67, 74, 77
Schooling v. Harrisburg , 42 Or. 494, 71 Pac. 605.....	638
School Township v. Wiggins , 122 Iowa, 602, 98 N. W. 490.....	574
Schoonover v. Bright , 24 W. Va. 698.....	826, 843
Schoonover v. Condon , 12 Wash. 475, 41 Pac. 195.....	571
Schori v. Stephens , 62 Ind. 441.....	1194
Schreiber v. Carey , 48 Wis. 208, 4 N. W. 124...168, 169, 171, 172, 177	
Schreiber v. Creed , 10 Sim. 196.....	503
Schroder v. Overman , 61 Ohio St. 1, 55 N. E. 158, 47 L. R. A. 156.....	728
Schroer v. Pettibone , 163 Ill. 42, 45 N. E. 207.....	1099
Schubach v. McDonald , 179 Mo. 163, 101 Am. St. Rep. 452, 78 S. W. 1020.....	1063
Schulenberg & Boeckeler Lumber Co. v. St. Louis K. & N. W. Ry. Co. , 129 Mo. 455, 31 S. W. 796.....	775
Schulenberg-Boeckeler Lumber Co. v. Town of Hayward , 20 Fed. 422, 424.....	648
Schuler v. Post , 18 App. Div. 374, 46 N. Y. Supp. 18.....	1421
Schultz v. Phenix Ins. Co. , 77 Fed. 375, 387.....	438
Schulz v. Albany , 42 App. Div. 437, 59 N. Y. Supp. 235; affirm- ing, 27 Misc. Rep. 51, 57 N. Y. Supp. 963.....	724
Schulze v. Corporation of Galasheils , [1895] App. Cas. 656.....	895
Schumm v. Seymour , 24 N. J. Eq. 143.....	601, 626
Schurmeier v. St. Paul & P. R. Co. , 10 Minn. 82 (Gil. 59), 88 Am. Dec. 59.....	771
Schuster v. Myers , 148 Mo. 422, 50 S. W. 103.....	824, 852
Schuyler v. Curtis , 147 N. Y. 434, 49 Am. St. Rep. 671, 42 N. E. 22, 31 L. R. A. 286 (reversing 27 Abb. N. C. 387, 15 N. Y. Supp. 787, 64 Hun, 594, 19 N. Y. Supp. 264).....	1059
Schuyler v. Pelissier , 3 Edw. Ch. 191.....	69, 70, 89
Schuyler Steam Towboat Co. , In re, 136 N. Y. 169, 32 N. E. 623, 20 L. R. A. 391.....	294, 325, 326
Schwaman v. Truax (N. Y.), 71 N. E. 464.....	1217
Schwoerer v. Boylston Market Assn. , 99 Mass. 285.....	501, 503
Scioto Val. R. Co. v. Lawrence , 38 Ohio St. 41, 43 Am. Rep. 419.....	777
Seofield v. Eighth School District , 27 Conn. 499...609, 611, 616, 630	
Seofield v. Lake Shore etc. R. Co. , 43 Ohio St. 571, 54 Am. Rep. 846, 3 N. E. 907.....	1062
Seofield v. Lansing , 17 Mich. 437.....	1228
Seofield v. Perkerson , 46 Ga. 350.....	585
Scorpion Silver Min. Co. v. Marsano , 10 Nev. 370.....	1246, 1251
Scott v. Allen , 53 Ill. App. 341.....	609
Scott v. Alvarez , [1895] 2 Ch. D. 603.....	1367
Scott v. Armstrong , 146 U. S. 499, 13 Sup. Ct. 148, 36 L. ed. 1059.....	369, 370, 371
Scott v. Aultman Co. , 211 Ill. 612, 103 Am. St. Rep. 215, 71 N. E. 112.....	1434
Scott v. Crawford , 16 Tex. Civ. App. 477, 41 S. W. 697.....	323
Scott v. Donald , 165 U. S. 107, 17 Sup. Ct. 262, 41 L. ed. 648....	583

Scott v. Duncombe, 49 Barb. 73.....	365
Scott v. Fawcett, 1 Dick. 299.....	1181
Scott v. Featherstone, 5 La. Ann. 306.....	1508
Scott v. Goshen, 162 Ind. 204, 70 N. E. 79.....	624
Scott v. Guernsey, 60 Barb. 163, 48 N. Y. 106..	1182, 1199, 1212, 1523
Scott v. Hotchkiss, 115 Cal. 94, 47 Pac. 45.....	176
Scott v. McFarland, 70 Fed. 280.....	1156
Scott v. Means, 80 Ky. 460.....	1173
Scott v. Menasha, 84 Wis. 73, 54 N. W. 263.....	1153
Scott v. Nichols, 27 Miss. 94, 61 Am. Dec. 503.....	1480
Scott v. Onderdonk, 14 N. Y. 9, 67 Am. Dec. 106.....	1236, 1237
Scott v. Rayment, L. R. 7 Eq. 112.....	1272
Scott v. Runner, 146 Ind. 12, 58 Am. St. Rep. 345, 44 N. E. 755.....	1091
Scott v. Scott, 33 Ga. 102.....	1090
Scott v. Sheehan, 145 Cal. 691, 79 Pac. 353.....	592
Scott v. Shreeve, 12 Wheat. 605, 6 L. ed. 744.....	1086
Scott v. Sierra Lumber Co., 67 Cal. 71, 76, 7 Pac. 131.....	154
Scott v. Smith, 121 N. C. 94, 28 S. E. 64.....	634
Scott v. Ware, 65 Ala. 174.....	167
Scottish Co-operative Soc. v. Glasgow Fleshers' Union, [1898] 35 Scot. L. R. 545.....	1049
Scottish U. & N. Ins. Co. v. Bowland (U. S.), 25 Sup. Ct. 345..	1075
Seovil v. Kennedy, 14 Conn. 360.....	1190
Seovill v. Thayer, 105 U. S. 143, 26 L. ed. 968.....	1472
Screven v. Clark, 48 Ga. 41.....	354
Scribner v. Allen, 12 Minn. 148 (Gil. 85).....	707, 708
Scribner v. Stoddart, 19 Am. Law Reg. 433, Fed. Cas. No. 12,561.....	986, 987
Scriven v. Hursh, 39 Mich. 98.....	1099
Scriven v. North, 124 Fed. 894.....	994
Scriven v. North (C. C. A.), 134 Fed. 366.....	995
Scruggs v. Decatur Mineral & Land Co., 86 Ala. 173, 5 South. 440.....	38
Scudder v. Kilfoil, 57 N. J. Eq. 171, 40 Atl. 602, 43 L. R. A. 86..	524
Scudder v. Mayor etc. of New York, 146 N. Y. 245, 40 N. E. 734; affirming 79 Hun, 613, 29 N. Y. Supp. 422.....	724
Scudder v. Trenton etc. Co., 1 N. J. Eq. 694, 23 Am. Dec. 756....	860
Scully v. Rose, 61 Md. 408.....	846
Sea v. Morehouse, 79 Ill. 216.....	1227
Seabrook v. Mostowitz, 51 S. C. 433, 29 S. E. 202.....	571
Sea Insurance Co. v. Stebbins, 8 Paige, 565.....	167
Seaman v. Lee, 10 Hun, 607.....	920, 967
Seaman v. Wright, 12 Abb. Pr. 304.....	90
Searcy v. Clay County, 176 Mo. 493, 75 S. W. 657.....	1123
Searing v. Heavysides, 106 Ill. 85.....	677, 679
Searle v. Choate, 25 Ch. D. 723.....	329
Searle v. Lead, 10 S. Dak. 405, 73 N. W. 913.....	835
Searle v. Lead, 10 S. Dak. 312, 73 N. W. 101, 39 L. R. A. 345..	764, 786
Searles v. Costillo, 12 La. Ann. 203.....	1246
Sears v. Ackerman, 138 Cal. 583, 72 Pac. 171.....	826
Sears v. Hicklin, 13 Colo. 143, 21 Pac. 1022.....	1161
Sears v. Hotchkiss, 25 Conn. 171, 65 Am. Dec. 557.....	542
Seastream v. New Jersey Exhibition Co. (N. J. Eq.), 58 Atl. 532.....	931
Seattle Gas & Electric Co. v. Citizens' Light & Power Co., 123 Fed. 588....	545

Seavey v. Drake, 62 N. H. 393.....	1360
Sebastian v. Booneville Academy Co., 22 Ky. Law Rep. 186, 56 S. W. 810.....	1526
Sebring v. Mersereau, Hopk. Ch. 501, 9 Cow. 344....	1182, 1202, 1205
Seccomb v. Wurster, 83 Fed. 856.....	577
Second Ward Bank v. Upmann, 12 Wis. 499.....	195
Secor v. Railroad Co., 7 Biss. 513, Fed. Cas. No. 12,605.....	322
Secord v. Powers, 61 Neb. 615, 87 Am. St. Rep. 474, 85 N. W. 846.....	1103
Seculovich v. Martin, 101 Cal. 673, 36 Pac. 387.....	28
Security Title & Trust Co. v. Schlender, 170 Ill. 609, 60 N. E. 854.....	366
Security Trust Co. v. Dodd, Mead & Co., 173 U. S. 624, 19 Sup. Ct. 545, 43 L. ed. 835.....	445
Security Sav. & Tr. Co. v. Goble, N. & P. R. Co., 44 Or. 370, 74 Pac. 919, 75 Pac. 697.....	415
Security Sav. & Tr. Co. v. Piper, 40 Pac. 144.....	238
Seeley v. Howard, 13 Wis. 336.....	1333
Seibert Cylinder Oil Cup Co. v. Michigan Lubricator Co., 34 Fed. 33.....	982
Seignious v. Pate, 32 S. C. 134, 17 Am. St. Rep. 846, 10 S. E. 880.....	180
Seixo v. Provezende, L. R. 1 Ch. App. 192.....	990
Selchow v. Baker, 93 N. Y. 59, 45 Am. Rep. 169.....	990
Selchow v. Chaffee & Selchow Mfg. Co., 132 Fed. 996.....	998
Selden v. Vermilya, 2 Sandf. (N. Y.) 568.....	1193, 1202
Sellers v. Stoffel, 139 Ind. 468, 39 N. E. 52.....	168
Sels v. Greene, 88 Fed. 129.....	576
Semple v. Cleveland & P. R. Co., 172 Pa. St. 369, 33 Atl. 564, 37 Wkly. Not. Cas. 365.....	1099
Sengfelder v. Hill, 16 Wash. 355, 58 Am. St. Rep. 36, 47 Pac. 757.....	154
Senour v. Matchett, 140 Ind. 636, 40 N. E. 122.....	688
Senour v. Ruth, 140 Ind. 318, 39 N. E. 946.....	688
Sensenderfer v. Kemp, 83 Mo. 581.....	17
Sentenne v. Green Co., 120 Fed. 436.....	1493
Senter v. Williams, 61 Ark. 189, 54 Am. St. Rep. 200, 32 S. W. 490.....	1447
Sercomb v. Catlin, 128 Ill. 556, 15 Am. St. Rep. 147, 21 N. E. 606.....	303, 305, 308, 450
Seton v. Slade, 7 Ves. Jr. 265, 271.....	1333, 1334, 1373
Sewall v. Boston etc. Co., 4 Allen, 277, 81 Am. Dec. 701.....	1397
Seward v. Rheiner, 2 Kan. App. 95, 43 Pac. 423.....	694
Sexton v. Home Fire Ins. Co., 35 App. Div. 170, 54 N. Y. Supp. 862.....	68
Sexton v. Sexton, 35 Ind. 88.....	1490
Seyfert v. Edison, 47 N. J. L. 428, 1 Atl. 502.....	195, 298
Seymour v. Alkire, 47 W. Va. 302, 34 S. E. 953.....	46
Seymour v. Long Dock Co., 20 N. J. Eq. 396.....	1518
Seymour v. Newman, 77 Mo. App. 578.....	365
Seymour v. Ricketts, 21 Neb. 240, 31 N. W. 781.....	1200
Seymour Water Co. v. City of Seymour (Ind.), 70 N. E. 514.....	1152
Shade v. Oldroyd, 39 Kan. 313, 18 Pac. 198.....	1320
Shadforth v. Temple, 10 Sim. 184.....	1378
Shadwell v. Hutchinson, 2 Barn. & Adol. 97.....	945
Shahan v. Swan, 48 Ohio St. 25, 29 Am. St. Rep. 517, 26 N. E. 222.....	1357

Shain v. Belvin , 79 Cal. 262, 21 Pac. 747.....	1156
Shainwald v. Lewis , 7 Saw. 148, 6 Fed. 766.....	189
Shakel v. Duke of Marlborough , 4 Madd. 463.....	166
Shamokin v. Shamokin & M. C. Elect. Ry. Co. , 196 Pa. St. 166, 46 Atl. 382.....	545
Shanahan v. Crampton , 92 Cal. 9, 28 Pac. 50.....	1248
Shanks v. Klein , 104 U. S. 18, 26 L. ed. 635.....	1534
Shanks v. Pearson , 66 Kan. 168, 71 Pac. 252.....	585
Shannon v. Frost , 42 Ky. (3 B. Mon.) 253.....	562
Shannon v. Hanks , 88 Va. 338, 13 S. E. 437.....	276, 277
Shannon v. Portland , 38 Or. 382, 62 Pac. 50.....	736
Shannon v. Wright , 60 Md. 520.....	145, 146
Shapira v. Paletz (Tenn. Ch. App.), 59 S. W. 774.....	1442
Shappirio v. Goldberg , 192 U. S. 232, 24 Sup. Ct. 259.....	1161
Sharkey v. McDermott , 91 Mo. 647, 60 Am. Rep. 270, 4 S. W. 107.....	1358
Sharon v. Hill , 20 Fed. 1, 36 Fed. 337.....	1152
Sharon v. Hill (Wash.), 79 Pac. 601.....	1154
Sharp v. Hibbins , 42 N. J. Eq. 543, 9 Atl. 113.....	1530
Sharp v. Ropes , 110 Mass. 381.....	505
Sharp v. Trimmer , 24 N. J. Eq. 422.....	1337
Sharpe v. Engle , 2 Okla. 624, 39 Pac. 384.....	731
Sharpe v. Loane , 124 N. C. 1, 32 S. E. 318.....	826, 845
Shattuck v. Carson , 2 Cal. 588.....	1225, 1227
Shaver v. Heller & Merz Co. , 108 Fed. 821, 48 C. C. A. 48....	992
Shaw v. Allen , 184 Ill. 77, 56 N. E. 403 (affirming 85 Ill. App. 23)	59
Shaw v. Aveline , 5 Ind. 380.....	1415
Shaw v. Chester , 2 Edw. Ch. 405.....	94
Shaw v. Coster , 8 Paige, 339, 35 Am. Dec. 690.....	65, 80, 94, 96
Shaw v. Davis , 78 Md. 314, 28 Atl. 619, 23 L. R. A. 294.....	546
Shaw v. Frey (N. J. Eq.), 59 Atl. 811.....	1081
Shaw v. Gregoire , 41 Mo. 413.....	1204
Shaw v. Lindsey , 60 Ala. 344.....	1075
Shea v. Nilima (C. C. A.), 133 Fed. 209.....	40
Sheafe v. Larimer , 79 Fed. 921.....	371
Shearer v. Shearer , 98 Mass. 107.....	1535
Shears v. Westover , 110 Mich. 505, 68 N. W. 266.....	1144
Sheehy v. McMillan , 26 App. Div. 140, 49 N. Y. Supp. 1088..	620
Sheeks v. Klotz , 84 Ind. 471.....	180
Shchan's Heirs v. Barnett's Heirs , 6 T. B. Mon. 592.....	91
Shelby v. Creighton (Neb.), 96 N. W. 382.....	1138
Sheldon v. Centre School District , 25 Conn. 224.....	672
Sheldon v. Dunbar , 200 Ill. 490, 65 N. E. 1095.....	59
Sheldon v. Motter (Kan.), 53 Pac. 89.....	1119
Sheldon v. Rockwell , 9 Wis. 166, 76 Am. Dec. 265.....	922
Sheldon v. Weeks , 51 Ill. App. 314.....	895
Shelfer v. London etc. Co. , [1895] L. R. 1 Ch. D. 287.....	923
Shell v. Martin , 19 Ark. 139, 141.....	1224, 1226
Shelly v. Mikkelson , 5 N. Dak. 22, 63 N. W. 210.....	1333
Shelton v. Platt , 139 U. S. 596, 11 Sup. Ct. 646, 35 L. ed. 276	655, 656, 657
Shelton v. Tiffin , 47 U. S. (6 How.) 163, 12 L. ed. 387.....	1117
Shepard v. Brown , 4 Giff, 208.....	1521
Shepard v. Manhattan Ry. Co. , 117 N. Y. 442, 23 N. E. 30	777, 780

Shepard v. Manhattan Ry. Co., 131 N. Y. 215, 30 N. E. 187....	779
Shepard v. Ogden, 2 Seam. (Ill.) 257..	1480
Shepardson v. Gillette, 133 Ind. 125, 31 N. E. 788.....	689
Shepardson v. Milwaukee County, 28 Wis. 593.....	1228
Shepardson v. Supervisors, 28 Wis. 593.....	1236
Shepherd v. Commissioners of Ross Co., 7 Ohio, 271.....	25
Shepherd v. Nixon, 43 N. J. Eq. 627, 13 Atl. 617.....	1246
Shepherd v. Pepper, 133 U. S. 626, 10 Sup. Ct. 438, 33 L. ed. 706	167, 171
Sherburne v. City of Portsmouth (N. H.), 58 Atl. 38.....	631
Sheridan v. Colvin, 78 Ill. 237.....	596
Sheridan v. McMullen, 12 Or. 150, 6 Pac. 497.....	806
Sheridan Brick Works v. Marion Trust Co., 157 Ind. 292, 87 Am. St. Rep. 207, 61 N. E. 666.....	112, 225
Sheriff v. Turner, 119 Fed. 782.....	579
Sherlock v. Kansas City Belt Ry. Co., 142 Mo. 172, 64 Am. St. Rep. 551, 43 S. W. 629.....	775, 931
Sherlock v. Winnetka, 59 Ill. 389.....	601, 604, 609, 680
Sherlock v. Winnetka, 68 Ill. 530.....	609, 680
Sherman v. Bellows, 24 Or. 553, 34 Pac. 549.....	581
Sherman v. Benford, 10 R. I. 559.....	647, 738
Sherman v. Carr, 8 R. I. 431.....	600
Sherman v. Clark, 4 Nev. 138, 97 Am. Dec. 516.....	550
Sherman v. Fitch, 98 Mass. 59.....	1227, 1229
Sherman v. Leonard, 10 R. I. 469..	738
Sherman v. Partridge, 11 How. Pr. (N. Y.) 154.....	77
Sherman Steam-Laundry Co. v. Carter, 24 Tex. Civ. App. 533, 60 S. W. 328	1124
Sherry v. Perkins, 147 Mass. 212, 9 Am. St. Rep. 689, 17 N. E. 307.....	874, 1013, 1030, 1037, 1056
Sherwood v. Baker, 105 Mo. 472, 16 S. W. 938, 24 Am. St. Rep. 399.....	36, 41
Sherwood v. Dunbar, 6 Cal. 53.....	1490
Sherwood v. Salmon, 5 Day (Conn.), 439, 5 Am. Dec. 167.....	1156
Shickell v. Berryville etc. Co., 3 Va. Sup. Ct. 45.....	817
Shields v. Arndt, 4 N. J. Eq. (3 Green's Ch.) 234.....	881
Shields v. Barrow, 17 How. 130, 15 L. ed. 158.....	1202
Shields v. Coleman, 157 U. S. 168, 15 Sup. Ct. 570, 39 L. ed. 660.....	324, 327
Shields v. McClung, 6 W. Va. 79.....	1077
Shields v. Mongollon Exploration Co. (C. C. A.), 137 Fed. 541..	1145
Shields v. Tarleton, 48 W. Va. 343, 37 S. E. 589.....	50
Shine v. Wilcox, 1 Dev. & B. Eq. 631.....	804
Shinkle v. City of Covington, 83 Ky. 420.....	632
Shinn v. Board of Education, 39 W. Va. 497, 20 S. E. 604....	625
Shipley v. Mechanics' Bank, 10 Johns. 484.....	1395
Shipley v. Ritter, 7 Md. 408, 61 Am. Dec. 371.....	826
Shipley v. Western Md. Tidewater R. Co., 99 Md. 115, 56 Atl. 968	836
Shipman v. Furniss, 69 Ala. 555, 563, 44 Am. Rep. 528.....	1232
Shipman v. Scott, 12 Civ. Proc. Rep. (N. Y.) 109, 14 Daly, 233.....	75
Shiras v. Ollinger, 50 Iowa, 571, 32 Am. Rep. 138.....	889
Shirley v. Goodnough, 15 Or. 642, 16 Pac. 871.....	1522
Shirley v. Hicks, 110 Ga. 516, 35 S. E. 782.....	848
Shivers v. Shivers, 32 N. J. Eq. 578.....	946, 955

Shoe Co. v. Saxey, 131 Mo. 221, 52 Am. St. Rep. 622, 32 S. W. 1106.....	1057
Shoemaker v. Smith, 74 Ind. 71.....	144
Shoemaker v. South Bend Spark-Arrester Co., 135 Ind. 471, 35 N. E. 280, 22 L. R. A. 332.....	1056, 1057
Shook v. Rankin, 3 Cent. Law Jour. 210, Fed. Cas. No. 12,805..	986
Shoppert v. Martin, 137 Mo. 455, 38 S. W. 967.....	767
Short v. Caldwell, 155 Mass. 57, 28 N. E. 1124.....	27
Short v. Prettyman, 1 Houst. (Del.) 334.....	1204
Shortall v. Mitchell, 57 Ill. 161.....	1338
Shortridge v. Bartlett, 14 B. Mon. 248.....	1075
Shotwell v. Lawson, 30 Miss. 27, 64 Am. Dec. 145.....	18
Shotwell v. Smith, 3 Edw. Ch. 588.....	167
Shotwell v. Smith, 3 Edw. Ch. (N. Y.) 621.....	169
Shrady v. Van Kirk, 51 App. Div. 504, 64 N. Y. Supp. 731....	345
Shreve v. Mathis, 63 N. J. Eq. 170, 52 Atl. 234.....	947
Shroyer v. Campbell, 31 Ind. App. 83, 67 N. E. 193.....	870, 913
Shubrick v. Guerard, 2 Desaus. 616.....	843
Shuey v. Holmes, 20 Wash. 13, 54 Pac. 540.....	366
Shufeldt v. Boehm, 96 Ill. 563.....	1434
Shufeldt v. Gandy, 25 Neb. 602, 41 N. W. 553.....	1095
Shufeldt v. Gandy, 34 Neb. 32, 51 N. W. 302.....	1092
Shull v. Kennon, 12 Ind. 35.....	1196, 1209
Shults v. Shults, 159 Ill. 654, 50 Am. St. Rep. 188, 43 N. E. 800.....	1223
Shultz v. Carter, Speer Eq. (S. C.) 533.....	1503
Shumate's Exrs. v. Crockett, 43 W. Va. 491, 27 S. E. 240.....	1446
Shute v. Shute, Prec. Ch. 111.....	1167
Sibley v. Society, 3 N. Y. Supp. 8, 15 Civ. Proc. Rep. 316, 56 N. Y. Super. Ct. (24 J. & S.) 274.....	82
Sichel v. Mosenthal, 30 Beav. 371.....	1270
Sickels v. Combs, 10 Misc. Rep. 551, 32 N. Y. Supp. 181.....	1132
Sicker v. Sicker, 23 Misc. Rep. 737, 53 N. Y. Supp. 106.....	1191
Sickles v. Gloucester Mfg. Co., 4 Blatchf. 229, 1 Fish. Pat. Cas. 222, Fed. Cas. No. 12,841.....	978
Sickles v. Manhattan Gas-Light Co., 64 How. Pr. 33.....	532
Sickles v. Wilmerding, 59 Hun, 375, 13 N. Y. Supp. 43.....	100
Side v. Brenneman, 7 App. Div. 273, 40 N. Y. Supp. 3.....	1200
Sidener v. Norristown Turnpike Co., 23 Ind. 623.....	764
Sidney Land & Colony Co. v. Milner, Caldwell & F. L. Co., 138 Ala. 185, 35 South. 48.....	566
Siegel v. New York & H. R. Co., 62 App. Div. 290, 70 N. Y. Supp. 1088.....	778
Siegel v. Swartz, 117 Fed. 13, 54 C. C. A. 399.....	1504
Siegfried v. Raymond, 190 Ill. 424, 60 N. E. 868.....	676, 681, 682
Sieveking v. Behrens, 2 Mylne & C. 581.....	65
Sievers, In re, 91 Fed. 366.....	256
Sigourney v. Munn, 7 Conn. 11.....	1534
Sigua Iron Co. v. Brown, 33 Misc. Rep. 50, 68 N. Y. Supp. 141..	379
Sills v. Goodyear, 80 Mo. App. 128.....	832
Silva v. Santos, 138 Cal. 536, 94 Am. St. Rep. 45, 71 Pac. 703..	1099
Silvers v. Merchants' & M. Sav. Fund & Bldg. Assn. (N. J. Eq.) 56 Atl. 294.....	427
Simmons v. Carlton, 44 Fla. 719, 33 South. 408.....	1232, 1233, 1234
Simmons v. Hendricks, 8 Ired. Eq. (N. C.) 85, 55 Am. Dec. 439..	1208
Simmons v. MacAdaras, 6 Mo. App. 297.....	1186
Simmons v. Wood, 45 How. Pr. 262.....	260, 270

Simmons Creek Coal Co. v. Doran, 142 U. S. 417, 12 Sup. Ct. 239, 35 L. ed. 1063.....	59
Simmons Hardware Co. v. Waibel, 1 S. D. 488, 36 Am. St. Rep. 755, 47 N. W. 814, 11 L. R. A. 267.....	107, 108, 258, 490
Simon v. Sabb, 56 S. C. 38, 33 S. E. 799.....	1444
Simon v. Schloss, 48 Mich. 233, 12 N. W. 196.....	146
Simper v. Foley, 2 Johns. & H. 555.....	963
Simpkins v. Taylor, 81 Hun, 467, 31 N. Y. Supp. 169.....	53
Simpson v. Denison, 10 Hare, 51.....	542
Simpson v. Ferguson, 112 Cal. 180, 53 Am. St. Rep. 201, 40 Pac. 104, 44 Pac. 484.....	167, 182
Simpson v. Howden, 3 Mylne & C. 97.....	1075, 1152, 1235
Simpson v. Montgomery, 25 Ark. 365, 99 Am. Dec. 228.....	1146
Simpson v. Moorhead, 65 N. J. Eq. 623, 56 Atl. 887.....	831
Simpson v. Pittsburgh Plate Glass Co., 28 Ind. App. 343, 62 N. E. 753.....	532
Simpson v. Union Stockyards Co., 110 Fed. 799.....	583
Simpson v. Wallace, 83 N. C. 477.....	1200
Simpson v. Ward, 80 Fed. 561.....	1079
Sims v. Adams, 78 Ala. 395.....	261
Sims v. Frankfort, 79 Ind. 446.....	821
Sims v. Gray, 93 Iowa, 38, 61 N. W. 171.....	1437
Sims v. Shelton, 2 Strob. Eq. 221.....	1264
Simson v. Bates, 10 Phila. 66.....	493
Sincer v. Alverson, 51 La. Ann. 951, 25 South. 650.....	240
Sinclair v. Commissioners of Winona County, 23 Minn. 404, 23 Am. Rep. 694.....	610, 629
Sindall v. Mayor etc. of Baltimore, 93 Md. 526, 49 Atl. 645....	702
Singer v. Carpenter, 125 Ill. 117, 17 N. E. 761.....	1267
Singer v. Heller, 40 Wis. 544.....	1526
Singer v. Hutchinson, 183 Ill. 606, 75 Am. St. Rep. 133, 56 N. E. 388.....	1469, 1470
Singerly v. Fox, 75 Pa. St. 112.....	358, 368
Singer Mfg. Co. v. Domestic S. M. Co., 49 Ga. 70, 15 Am. Rep. 674.....	1056
Singer Sewing Machine Co. v. Union Button-Hole etc. Co., 1 Holmes, 253, Fed. Cas. No. 12,904.....	497, 498, 529, 1299
Single v. Scott Paper Mfg. Co., 55 Fed. 553.....	25, 26
Singleton v. Moore, Rice Eq. (S. C.) 110.....	1490
Singleton v. Townsend, 45 Mo. 379.....	1490
Sinnett v. Moles, 38 Iowa, 25.....	692
Sinsabaugh v. Dun (Ill.), 73 N. E. 390.....	1129
Sinsheimer v. United Garment Workers, 77 Hun, 215, 28 N. Y. Supp. 321.....	1029, 1032
Sioux City Bridge Co. v. Dakota County, 61 Neb. 75, 84 N. W. 607.....	715, 717
Sisler v. Foster (Ohio), 74 N. E. 639.....	728
Sistare's Estate, In re, 27 Abb. N. C. 34, 15 N. Y. Supp. 709....	299
Sixth Ave R. Co. v. City of New York, 63 Hun, 271, 17 N. Y. Supp. 903.....	724
S. Jarvis Adams Co. v. Knapp, 121 Fed. 34.....	531
Sjoberg v. Security Savings and Loan Assn., 73 Minn. 203, 72 Am. St. Rep. 616, 75 N. W. 1116.....	241
Skelly v. Metropolitan El. R. Co., 1 App. Div. 51, 37 N. Y. Supp. 7, affirmed without opinion, 158 N. Y. 677, 52 N. E. 1126.....	781
Skelton v. Skelton, 2 Swanst. 170.....	801, 802, 812

Skiff v. Cross, 21 Iowa, 459.....	1511
Skiles v. Houston, 110 Pa. St. 254, 2 Atl. 30.....	371
Skilton v. Payne, 42 N. Y. Supp. 111, 18 Misc. Rep. 332.....	1521
Skinker v. Heman, 148 Mo. 349, 49 S. W. 1026.....	712, 713
Skinner, Matter of, 2 Dev. & B. Eq. 63.....	1216
Skinner v. Houghton, 92 Md. 68, 84 Am. St. Rep. 485, 48 Atl. 85.....	1390, 1391
Skinner v. Maxwell, 66 N. C. 45.....	105
Skinner v. Maxwell, 68 N. C. 400.....	286, 302, 309, 310, 311
Skinner v. Terry, 134 N. C. 305, 46 S. E. 517.....	17
Skinner v. White, 17 Johns. 357	1086
Skip v. Harwood, 3 Atk. 564.....	303, 304
Skirving v. National Life Ins. Co., 19 U. S. App. 442, 59 Fed. 742, 8 C. C. A. 241.....	1075
Slack v. Craft (N. J. Eq.), 57 Atl. 1014	1139
Slack v. Wood, 9 Gratt. 40.....	1076
Slade v. Barlow, L. R. 7 Eq. 296.....	1200
Slaney v. Sidney, 14 Mees. & W. 800.....	100
Slee v. Bloom, 5 Johns. Ch. (N. Y.) 366, 20 Johns. 669.....	1516
Slegel v. Lanier, 148 Pa. St. 236, 23 Atl. 996.....	1226
Slemmer's Appeal, 58 Pa. St. 168, 98 Am. Dec. 255.....	141, 150
Slemmons v. Thompson, 23 Or. 215, 31 Pac. 514.....	1395
Slingerland v. Slingerland, 39 Minn. 197, 39 N. W. 146.....	1359
Slingsby v. Boulton, 1 Ves. & B. 334.....	86, 94
Sloan v. Gibbs, 56 S. C. 480, 76 Am. St. Rep. 559, 35 S. E. 408.....	1481, 1482, 1483
Sloan v. Hunter, 56 S. C. 385, 76 Am. St. Rep. 551, 34 S. E. 658.....	1444
Sloan v. Moore, 37 Pa. St. 217.....	147
Sloan v. Rose, 101 Va. 151, 43 S. E. 329.....	1321, 1324
Sloan v. Sloan, 25 Fla. 53, 5 South. 603.....	1230
Slockbower v. Kanouse, 50 N. J. Eq. 481, 26 Atl. 333.....	1200
Sloo v. Pool, 15 Ill. 47.....	1488
S. L. Sheldon Co. v. Mayers, 81 Wis. 627, 51 N. W. 1082.....	1153
Slusher v. Simpkinson, 101 Ky. 594, 40 S. W. 570, 43 S. W. 692.....	1446
Small v. Minneapolis Electro-Matrix Co., 45 Minn. 264, 47 N. W. 797.....	541
Small v. Smith, 14 S. D. 621, 86 Am. St. Rep. 808, 86 N. W. 649.....	440
Smalley v. Isaacson, 40 Minn. 450, 42 N. W. 352.....	1187
Smallman v. Onions, 3 Brown Ch. 621.....	808, 817
Smelser v. Pugh, 29 Ind. App. 614, 64 N. E. 943.....	1139, 1145
Smiser v. Stevens-Wolford Co.'s Assignee, 20 Ky. Law Rep. 501, 45 S. W. 357.....	1444
Smith, Ex parte, 134 N. C. 495, 47 S. E. 16.....	1210
Smith v. Allen, 63 Ill. 474.....	1078
Smith v. Aykwell, 3 Atk. 566	1153
Smith v. Baker, 1 Ban. & A. 117, Fed. Cas. No. 13,010.....	979
Smith v. Baxter, [1900] L. R. 2 Ch. D. 138.....	948
Smith v. Bivens, 56 Fed. 352.....	831
Smith v. Butler, 11 Or. 46, 4 Pac. 517.....	1110
Smith v. Brown, 164 Mass. 584, 42 N. E. 101.....	527
Smith v. Butcher, 28 Gratt. 144.....	190
Smith v. Carroll, 28 Tex. Civ. App. 330, 66 S. W. 863.....	1118
Smith v. City Council of Rome, 19 Ga. 89, 83 Am. Dec. 298....	803
Smith v. Cockrell, 66 Ala. 64.....	1226, 1228, 1232, 1233
Smith v. Collyer, [1803] 8 Ves. 89.....	839

Smith v. Commrs. of Leavenworth Co., 9 Kan. 296.....	695
Smith v. Cooke, 3 Atk. 378.....	814
Smith v. Cooley, 65 Cal. 46, 2 Pac. 880.....	1188
Smith v. Davis, 90 Cal. 25, 25 Am. St. Rep. 94, 27 Pac. 27....	29, 30
Smith v. Davis, 63 Hun, 100, 17 N. Y. Supp. 614.....	317
Smith v. Day, L. R. 13 Ch. D. 651.....	961
Smith v. Dunn, 27 Ala. 315	1185, 1199
Smith v. Emigrant Industrial Sav. Bank, 17 N. Y. St. Rep. 852, 2 N. Y. Supp. 617	93
Smith v. Ferris, 143 N. Y. 495, 39 N. E. 3.....	1506
Smith v. Ft. Scott H. & W. R. R. Co., 99 U. S. 398, 25 L. ed. 437	1424, 1426
Smith v. Frio County (Tex. Civ. App.), 50 S. W. 958.....	816
Smith v. Gaines, 38 N. J. Eq. 65.....	1187
Smith v. Gardner, 12 Or. 221, 53 Am. Rep. 342, 6 Pac. 771....	832, 841
Smith v. Goodknight, 121 Ind. 312, 23 N. E. 148.....	768
Smith v. Goodman, 149 Ill. 75, 36 N. E. 621.....	392
Smith v. Greeley, 14 N. H. 378.....	1149
Smith v. Gufford, 36 Fla. 481, 51 Am. St. Rep. 37, 18 South. 717..	1129
Smith v. Halkyard, 16 Fed. 414.....	982
Smith v. Hammond, 6 Sim. 10.....	70, 87, 89
Smith v. Hancock, [1894] 2 Ch. 377.....	525
Smith v. Harkins, 3 Ired. Eq. 613, 44 Am. Dec. 83.....	1004
Smith v. Hatch, 46 N. H. 146.....	1356
Smith v. Houston, 6 Ohio, 101, 25 Am. Dec. 741.....	942
Smith v. Hosmer, 84 Mich. 564, 47 N. W. 1092.....	303, 305
Smith v. Huckabee, 53 Ala. 191.....	1473
Smith v. Ingersoll-Sergeant etc. Co., 12 Misc. Rep. 5, 33 N. Y. Supp. 70, reversing 7 Misc. Rep. 374, 27 N. Y. Supp. 907	894, 920
Smith v. Jeyes, 4 Beav. 503	143, 144
Smith v. Johnson, 57 Ohio St. 486, 49 N. E. 693.....	374
Smith v. Kammerer, 152 Pa. St. 98, 25 Atl. 165.....	1124
Smith v. Kelley, 31 Hun, 387.....	197
Smith v. Kelly, 24 Or. 464, 33 Pac. 642.....	645, 734
Smith v. Kochersperger, 180 Ill. 527, 54 N. E. 614.....	686
Smith v. Levaux, 2 De Gex, J. & S. 11.....	1521
Smith v. Lockwood, 13 Barb. 209.....	895
Smith v. Loewenstein, 50 Ohio, 346, 34 N. E. 159.....	1379
Smith v. Longe, 20 Fla. 697.....	674
Smith v. Lowe, 1 Edw. Ch. 33.....	149
Smith v. Lusk, 119 Ala. 394, 24 South. 256.....	156
Smith v. Marks, 2 Rand. 449.....	1517
Smith v. McClusky, 45 Barb. 610.....	1390
Smith v. McIver, 9 Wheat. 532, 6 L. ed. 152.....	1089
Smith v. McLain, 11 W. Va. 654.....	1078, 1109
Smith v. McLeod, 3 Ired. Eq. (N. C.) 390.....	1508
Smith v. McMillan, 46 W. Va. 577, 33 S. E. 283.....	567
Smith v. Mitchell, 21 Wash. 586, 75 Am. St. Rep. 858, 58 Pac. 667	930
Smith v. Moore, 6 Dana, 417	1215
Smith v. Moore, 26 Ill. 392.....	1388
Smith v. Morrill, 12 Colo. App. 233, 55 Pac. 824.....	1113
Smith v. Morse, 148 Mass. 407, 19 N. E. 393.....	901
Smith v. Mosby, 9 Heisk. 501.....	369
Smith v. Myers, 109 Ind. 1, 58 Am. Rep. 375, 9 N. E. 692.....	589

Smith v. New York Con. Stage Co., 18 Abb. Pr. 419.....	390, 397
Smith v. Orser, 42 N. Y. 132.....	1535
Smith v. Parker, 131 N. C. 470, 42 S. E. 910.....	567
Smith v. Pearce, 6 Baxt. 72.....	1118
Smith v. People, 93 Ill. App. 135.....	309
Smith v. Pettingill, 15 Vt. 82, 40 Am. Dec. 667.....	821
Smith v. Phinizy, 71 Ga. 641.....	1077
Smith v. Point Pleasant & O. R. R. Co., 23 W. Va. 451.....	773
Smith v. Port Dover etc. R. Co., 12 Ont. App. 288.....	119
Smith v. Powell, 50 Ill. 21.....	1078
Smith v. Quarles (Tenn. Ch. App.), 46 S. W. 1035.....	1096
Smith v. Reading City Pass. Ry. Co., 156 Pa. St. 5, 26 Atl. 779..	543
Smith v. Reid, 134 N. Y. 568, 31 N. E. 1082.....	1441
Smith v. Reynolds, 9 App. D. C. 261.....	584
Smith v. Rochester, 92 N. Y. 463, 44 Am. Rep. 393.....	869
Smith v. Rochester, 38 Hun, 612, affirmed in 104 N. Y. 674..	909, 969
Smith v. Rock, 59 Vt. 232, 9 Atl. 551.....	826
Smith v. Rude Bros. Mfg. Co., 131 Ind. 150, 30 N. E. 947.....	689
Smith v. Runnels, 97 Iowa, 55, 65 N. W. 1002.....	1185
Smith v. St. Louis & S. F. Ry. Co., 151 Mo. 391, 52 S. W. 378, 48 L. R. A. 368.....	334
Smith v. Sands, 24 Fed. 470.....	979
Smith v. Schlink, 15 Colo. App. 325, 62 Pac. 1044.....	836
Smith v. Sioux City Nursery etc. Co., 109 Iowa, 51, 79 N. W. 457.....	288, 290, 295, 1424
Smith v. Smith, L. R. 20 Eq. 500.....	936, 954
Smith v. Smith, 43 Am. St. Rep. 367, 368, note.....	1537
Smith v. Smith, 159 Ind. 388, 65 N. E. 183.....	686
Smith v. Smith, 150 Mass. 73, 22 N. E. 437.....	1226
Smith v. Smith, Hoff. Ch. (N. Y.) 506.....	1187
Smith v. Smith, 10 Paige, 473.....	1190, 1210
Smith v. Smith (S. C.), 29 S. E. 227.....	494
Smith v. Smith (Tenn.), 57 S. W. 198.....	1187
Smith v. Smith, 4 Rand. 95, 102.....	1183, 1186
Smith v. Smith, 48 W. Va. 51, 35 S. E. 876.....	1438
Smith v. Spingler, 83 Mo. 408.....	371
Smith v. State, 46 Ind. 617.....	1482
Smith v. Superior Court, 97 Cal. 348, 32 Pac. 322.....	227
Smith v. Target, 2 Anstr. 529.....	90
Smith v. Thomas, 99 Va. 86, 37 S. E. 784.....	1232
Smith v. Tiffany, 13 Hun, 671.....	167, 177
Smith v. Trustees etc. of Brookhaven, 55 N. Y. Supp. 370, 36 App. Div. 386.....	1216
Smith v. Turner, Pree. Ch. 561.....	1349
Smith v. Underdunk, 1 Sandf. Ch. 579.....	1349
Smith v. Union County Nat. Bank, 131 Ind. 201, 30 N. E. 948..	689
Smith v. United States Express Co., 135 Ill. 279, 25 N. E. 527..	382
Smith v. Wells, 20 How. Pr. 158.....	109
Smith v. White, 62 Neb. 56, 86 N. W. 930.....	154
Smith v. Woodruff, 48 Barb. 438.....	991
Smith v. Young, 160 Ill. 163, 43 N. E. 486.....	940
Smith & Fleek's Appeal, 69 Pa. St. 474.....	817
Smith-Dimmick Lumber Co. v. Teague, 119 Ala. 385, 24 South. 4.....	201, 227, 261, 267, 272
Smither v. Lewis, 1 Vern. 398.....	1415
Smithson v. Smithson, 37 Neb. 535, 40 Am. St. Rep. 504, 56 N. W. 300.....	1124

TABLE OF CASES CITED.

1761

Smitzer v. McCulloch , 76 Va. 777.....	880
Smoot v. Judd , 161 Mo. 673, 84 Am. St. Rep. 738, 61 S. W. 854.....	1113
Smoot v. Judd (Mo.) , 83 S. W. 481.....	1113
Smoot v. Rea , 19 Md. 398, 410	1332
Smyth v. Ames , 169 U. S. 466, 18 Sup. Ct. 418, 42 L. ed. 819....	586
Smyth v. Sturges , 108 N. Y. 495, 504, 505, 15 N. E. 544.....	1364
Smythe v. Smythe , 2 Swanst. 251.....	812, 814
Sneathen v. Sneathen , 104 Mo. 201, 24 Am. St. Rep. 328, 16 S. W. 497	1228, 1233
Sneed v. Atherton , 6 Dana, 276, 32 Am. Dec. 70.....	1184, 1212
Snell v. Snell , 123 Ill. 403, 5 Am. St. Rep. 526, 14 N. E. 684....	1147
Snelling v. American Freehold Land Mort. Co. , 107 Ga. 852, 73 Am. St. Rep. 60, 33 S. E. 634.....	1099
Snider v. Lehnerr , 5 Or. 385.....	1342
Snider v. Rinehart , 20 Colo. 448, 39 Pac. 408.....	1124
Snipes v. Kelleher , 31 Wash. 386, 72 Pac. 67.....	45, 56
Snodgrass v. Butler , 54 Miss. 45	90, 94, 96, 97
Snook v. Munday , 96 Md. 514, 54 Atl. 77.....	1494
Snow v. Boston B. Mfg. Co. , 158 Mass. 325, 33 N. E. 588.....	44
Snow v. Williams , 16 Hun, 468.....	915, 967
Snow v. Winslow , 54 Iowa, 200, 6 N. W. 191.....	401
Snowden v. Tyler , 21 Neb. 215, 31 N. W. 661.....	1244
Snyder v. Armstrong , 37 Fed. 18.....	369
Snyder v. Cabell , 29 W. Va. 48, 1 S. E. 241.....	870
Snyder v. Fort Madison St. Ry. Co. , 105 Iowa, 284, 75 N. W. 179, 41 L. R. A. 345.....	769, 771
Snyder v. Foster , 77 Iowa, 638, 42 N. W. 506.....	610
Snyder v. Hopkins , 31 Kan. 557, 3 Pac. 367.....	803, 843, 844, 845
Snyder v. Marks , 109 U. S. 189, 3 Sup. Ct. 157, 27 L. ed. 901....	652
Snyder v. Smith , 185 Mass. 58, 69 N. E. 1089.....	1452
Sobernheimer v. Wheeler , 45 N. J. Eq. 614, 18 Atl. 234.....	439
Social Register Assn. v. Murphy , 128 Fed. 117.....	984
Social Register Assn. v. Murphy , 129 Fed. 148.....	985
Societe Anonyme Du Filtre etc. v. Allen , 84 Fed. 812.....	983
Society etc. Manfs. v. Morris etc. Co. , 1 N. J. Eq. (Saxt.) 157, 21 Am. Dec. 41	969
Socrates Quicksilver Mines v. Carr Realty Co. , 64 C. C. A. 539, 130 Fed. 293	44
Soden v. Emporia , 7 Kan. App. 583, 52 Pac. 461.....	606
Sohler v. Sohler , 135 Cal. 323, 87 Am. St. Rep. 98, 67 Pac. 282	1101, 1105
Solis v. Blank , 199 Pa. St. 600, 49 Atl. 302.....	443
Sollory v. Learer , L. R. 9 Eq. Cas. 22	116, 203
Solomon v. Fleming , 34 Neb. 40, 51 N. W. 304	588, 628
Solt v. Anderson , 63 Neb. 734, 89 N. W. 306, 93 N. W. 205..	1293, 1294
Soltau v. De Held , 2 Sim., N. S., 133, 151....	862, 869, 880, 895, 930
Soly v. Aasen , 10 N. D. 108, 86 N. W. 108	1427
Somerby v. Buntin , 118 Mass. 279, 19 Am. Rep. 459	1272
Somerset v. Cookson , 3 P. Wms. 389.....	1263
Southall v. Southall , 6 Tex. Civ. App. 694, 26 S. W. 150.....	56
Southampton Dock Co. v. Southampton etc. Board , L. R. 11 Eq. 254	1073, 1521
South & North Ala. R. Co. v. Highland Ave. & B. R. Co. , 98 Ala. 400, 39 Am. St. Rep. 74, 13 South. 682.....	1278
Southard v. Benner , 72 N. Y. 424	375

Southard v. Curley , 134 N. Y. 148, 30 Am. St. Rep. 642, 31 N. E. 330, 16 L. R. A. 561	1149
Southard v. Morris Canal Co. , 1 N. J. Eq. 519.....	805, 860
South Bend Log Mfg. Co. v. Pierre F. & M. Ins. Co. , 4 S. D. 173, 56 N. W. 98	1409
South Chicago Brewing Co. v. Taylor , 205 Ill. 132, 68 N. E. 732.....	1229
South Chicago City R. Co. v. Calumet El. St. R. Co. , 171 Ill. 391, 49 N. E. 576	496, 499
South Covington etc. Ry. Co. v. Berry , 93 Ky. 43, 40 Am. St. Rep. 161, 18 S. W. 1026, 15 L. R. A. 604	632
South Eastern Co. v. Knott , 10 Hare, 122.....	1300, 1335
South Eastern Ry. v. Brogden , 3 Macn. & G. 8.....	1518
Southerland v. Harper , 83 N. C. 200.....	1133
Southern Bank & Trust Co. v. Folsom , 75 Fed. 929, 21 C. C. A. 568.....	1079
Southern B. & L. Assn. v. Miller , 118 Fed. 369, 55 C. C. A. 195..	451
Southern B. & L. Assn. v. Price , 88 Md. 155, 41 Atl. 53, 42 L. R. A. 206.....	443
Southern Cal. Inv. Co. v. Wilshire , 144 Cal. 68, 77 Pac. 767....	968
Southern Cal. Ry. Co. v. Rutherford , 62 Fed. 796.....	1041
Southern Dev. Co. v. Farmers' L. & T. Co. , 79 Fed. 212, 24 C. C. A. 497.....	422
Southern Granite Co. v. Wadsworth , 115 Ala. 570, 22 South. 157	286, 329
Southern Home B. & L. Assn. v. Tony , 78 Miss. 916, 29 South. 825.....	568
Southern Ind. Exp. Co. v. United States Express Co. , 88 Fed. 659, affirming 92 Fed. 1022, 35 C. C. A. 172.....	1052
Southern Min. Co. v. Lowe , 105 Ga. 352, 31 S. E. 191.....	585
Southern Mutual B. & L. Assn. v. Andrews , 122 Ala. 601, 26 South. 113.....	384
Southern Oregon Co. v. Coos County , 39 Or. 185, 64 Pac. 646..	733, 734, 735
Southern Pac. Co. v. Colorado Fuel & Iron Co. , 101 Fed. 779, 42 C. C. A. 12.....	1062
Southern Pac. Co. v. Earl , 82 Fed. 691, 27 C. C. A. 185....	482, 483
Southern Pac. R. Co. v. Allen , 112 Cal. 455, 44 Pac. 796.....	1393
Southern Pac. R. Co. v. Board of R. R. Commrs. , 78 Fed. 236....	586
Southern Pac. R. Co. v. Groeck , 68 Fed. 609.....	36
Southern Pac. R. Co. v. Maddox , 75 Tex. 300, 12 S. W. 815....	338
Southern Pac. R. Co. v. Stanley , 49 Fed. 263.....	51, 61, 1231
Southern R. Co. v. Asheville , 69 Fed. 359.....	644, 657, 660
Southern R. Co. v. Carnegie Steel Co. , 176 U. S. 257, 20 Sup. Ct. 347, 44 L. ed. 458, affirming 76 Fed. 492, 22 C. C. A. 289..	420
Southern R. Co. v. Chapman Jack Co. , 54 C. C. A. 598, 117 Fed. 424.....	419
Southern R. Co. v. Ensign Mfg. Co. , 54 C. C. A. 591, 117 Fed. 417.	419
Southern R. Co. v. Franklin & P. R. Co. , 96 Va. 693, 32 S. E. 485, 44 L. R. A. 297.....	583, 1312, 1318
Southern R. Co. v. Greensboro Ice & Coal Co. , 134 Fed. 82....	584
Southern R. Co. v. Machinists' Union , 111 Fed. 49.....	1025
Southern R. Co. v. North Carolina Corp. Com. , 104 Fed. 700..	645, 659
Southey v. Sherwood , 2 Mer. 435.....	987
Southmayd v. McLaughlin , 24 N. J. Eq. 181.....	846
South Omaha v. Taxpayers' League , 42 Neb. 671, 60 N. W. 957..	610

South Platte Land Co. v. Commissioners of Buffalo Co., 7 Neb. 253.....	710
Southwark Nat. Bank v. Childs, 39 App. Div. 560, 57 N. Y. Supp. 789.....	68, 96
Southwestern Brush E. L. & P. Co. v. Louisiana Electric Light Co., 45 Fed. 893.....	984
Southwestern Tel. & Tel. Co. v. Benson, 63 Ark. 283, 38 S. W. 341.....	82
Southwestern Tel. & Tel. Co. v. Howard, 3 Tex. Civ. App. 335, 22 S. W. 524.....	1132
Southwest Missouri Light Co. v. City of Joplin, 101 Fed. 23, 33.....	636
Southworth v. Smith, 27 Conn. 355, 71 Am. Dec. 72.....	817
Soutter v. Atwood, 34 Me. 153, 56 Am. Dec. 647.....	1184
Sovereign Camp, Woodmen of the World v. Wood, 100 Mo. App. 655, 75 S. W. 377.....	69
Sowerby v. Fryer, L. R. 8 Eq. 417.....	806
Sowles v. Hall, 62 Vt. 247, 22 Am. St. Rep. 101, 20 Atl. 810.....	1334
Sowles v. Martin, 76 Vt. 180, 56 Atl. 579.....	1521, 1522
Spader v. Davis, 5 Johns. Ch. 280.....	1415
Spalding v. Commonwealth, 88 Ky. 135, 10 S. W. 420.....	322
Spalding v. St. Joseph's Industrial School, 107 Ky. 382, 54 S. W. 200.....	52, 41
Spargur v. Romine, 38 Neb. 736, 57 N. W. 523.....	716
Sparhawk v. Union etc. Ry. Co., 54 Pa. St. 401.....	896
Spaulding v. Harvey, 129 Ind. 106, 28 Am. St. Rep. 176, 28 N. E. 323, 13 L. R. A. 619.....	1499, 1507
Spaulding v. Smith, 162 Mass. 543, 39 N. E. 189.....	901
Spaulding v. Warner, 59 Vt. 646, 11 Atl. 186.....	1186
Spaulding v. Woodward, 63 N. H. 573, 16 Am. Rep. 392.....	1193
Spear v. Newell, 2 Paine C. C. 267, Fed. Cas. No. 13,224.....	1527
Spears v. Thomas, 24 Ky. Law Rep. 1154, 70 S. W. 1060.....	425, 426
Spears v. Willis, 151 N. Y. 443, 45 N. E. 849.....	1263
Special Bank Comms. v. Franklin Sav. Inst., 11 R. I. 557.....	427
Speed v. Brown, 10 B. Mon. (Ky.) 108.....	1422
Speer v. Cawter, 2 Mer. 410, 417.....	1172, 1173, 1174
Speer v. Cawter, 17 Ves. 216.....	1176
Speer v. Speer, 14 N. J. Eq. 240.....	1205
Speights v. Peters, 9 Gill (Md.), 475.....	141, 145, 146
Speke v. Walrond, Toth. 155.....	1182
Spelman v. Freedman, 130 N. Y. 421, 29 N. E. 765.....	1430
Spencer v. Point Pleasant & O. R. R. Co., 23 W. Va. 406, 420.....	773
Spencer v. Richmond, 61 N. Y. Supp. 397, 46 App. Div. 481.....	1419
Spencer v. School Dist., 15 Kan. 259, 22 Am. Rep. 268.....	630
Spencer v. Seaboard Air Line Ry. Co. (N. C.), 49 N. E. 96.....	41
Spencer v. World's Columbian Exposition, 163 Ill. 117, 45 N. E. 250 (affirming 58 Ill. App. 637).....	392
Sperb v. Metropolitan El. R. Co., 137 N. Y. 155, 32 N. E. 1050, 20 L. R. A. 752.....	781
Sperry v. Albina, 17 Or. 481, 21 Pac. 453.....	1226
Sperry & H. Co. v. Mechanics' Clothing Co., 128 Fed. 800, 135 Fed. 833.....	1065
Sperry & H. Co. v. Temple, 137 Fed. 992.....	1065
Sperry & H. Co. v. Vine (N. J. Eq.), 57 Atl. 1036.....	535
Spicer v. Martin, L. R. 14 App. Cas. 12.....	508
Spiegler v. City of Chicago (Ill.), 74 N. E. 718.....	633
Spight v. Waldron, 51 Miss. 356.....	1197

Spilman v. City of Parkersburg, 35 W. Va. 605, 14 S. E. 279....	598
Spindle v. Shreve, 111 U. S. 542, 4 Sup. Ct. 522, 28 L. ed. 512....	1420, 1421
Spings v. Bowery Nat. Bank, 63 Hun, 505, 18 N. Y. Supp. 574..	365
Spinning v. Ohio L. I. & T. Co, 2 Disn. (Ohio) 336.....	302, 303, 304
Spires v. Urbahn, 124 Cal. 110, 56 Pac. 794.....	1296
Spitts v. Wells, 18 Mo. 471.....	1184
Spofford v. Bangor etc. R. R., 66 Me. 51.....	1227
Spofford v. Southern B. R. R. Co., 15 Daly, 162, 4 N. Y. Supp. 388.	772
Spokane v. Amsterdamsch Trustees Kantoor, 18 Wash. 81, 50 Pac. 1088.....	154, 156
Spokane etc. Co. v. Post, 50 Fed. 429.....	938, 940, 947
Spooner v. Bay St. Louis Syndicate, 44 Minn. 401, 46 N. W. 848..	116
Spooner v. Cross (Iowa), 102 N. W. 1118.....	1366
Spooner v. McConnell, 1 McLean, 337, Fed. Cas. No. 13,245....	878
Spooner v. Spooner, 26 Minn. 138, 1 N. W. 838.....	469
Spooner v. Travelers' Ins. Co., 76 Minn. 311, 77 Am. St. Rep. 651, 79 N. W. 305.....	1435
Sporle v. Whayman, 20 Beav. 607.....	1270
Sprague v. Rhodes, 4 R. I. 301.....	878
Sprague v. West, 127 Mass. 471.....	83
Sprague Electric Ry. & Motor Co. v. Nassau Electric R. Co., 95 Fed. 821, 37 C. C. A. 286.....	983
Spraker v. Bartlett, 73 Ill. App. 522.....	1076
Spreckels v. Hawaiian Com. & Sugar Co., 117 Cal. 377, 49 Pac. 353.....	1125
Sprigg v. Commonwealth etc. Co., 206 Pa. St. 548, 56 Atl. 33	1516, 1517
Spriggs v. Delaware, L. & W. R. Co., 88 Hun, 385, 34 N. Y. Supp. 810.....	897
Spring v. South Carolina Ins. Co., 8 Wheat. 268, 5 L. ed. 614..	92, 97
Springer v. Borden, 154 Ill. 668, 39 N. E. 603.....	1275
Springer v. Darlington, 207 Ill. 238, 69 N. E. 946.....	956
Springer v. Savage, 143 Ill. 301, 32 N. E. 520.....	1191
Springfield v. Edwards, 84 Ill. 626.....	598, 609, 624, 680
Springfield Grocery Co. v. Thomas, 3 Ind. Ter. 330, 58 S. W. 557..	1429
Springhead Spinning Co. v. Riley, [1868] L. R. 6 Eq. 551.....	1031
Springle v. Shields, 17 Ala. 295.....	1369
Springport v. Teutonia Sav. Bank, 75 N. Y. 397.....	1155
Spring Valley Waterworks v. Bartlett, 16 Fed. 615, 8 Saw. 555	598, 599, 606
Spring Valley Water Works v. San Francisco, 82 Cal. 286, 16 Am. St. Rep. 116, 22 Pac. 910, 1046, 6 L. R. A. 756.....	636
Spring Valley Water Works v. San Francisco, 124 Fed. 575....	636
Sproat v. Durland, 2 Okla. 24, 35 Pac. 682, 886.....	851
Sprogg v. Dichman, 59 N. Y. Supp. 966, 28 Misc. Rep. 409.....	1414
Spurrier v. Hancock, 4 Ves. Jr. 662.....	1335, 1338
Spurlock v. Dorman, 182 Mo. 242, 81 S. W. 412.....	765
Squire v. Hewlett, 141 Mass. 597, 6 N. E. 779.....	154
Stacker v. Wilson (Tenn. Ch. App.), 52 S. W. 709.....	1440
Stackpole v. Seymour, 127 Mass. 104.....	1395
Stafford v. Giles, 135 Pa. St. 411, 19 Atl. 1028.....	1139
Stahlhut v. Bauer, 51 Neb. 64, 70 N. W. 496.....	594
Staight v. Burn, L. R. 5 Ch. App. 163.....	940, 944, 953, 959, 960
Stairley v. Rabe, McMull. Eq. (S. C.) 22.....	165

Stallard v. Cushing, 76 Cal. 472, 18 Pac. 427.....	955
Standard Am. Pub. Co. v. Methodist Book Concern, 33 App. Div. 409, 54 N. Y. Supp. 55.....	531
Standard Elevator Co. v. Crane Elevator Co., 56 Fed. 718, 6 C. C. A. 100.....	982
Standard Fashion Co. v. Siegel-Cooper Co., 157 N. Y. 60, 68 Am. St. Rep. 749, 51 N. E. 408, 43 L. R. A. 854, affirming 30 App. Div. 564, 52 N. Y. Supp. 433, and reversing 22 Misc. Rep. 624, 50 N. Y. Supp. 1056.....	498, 528, 1279
Standard Oil Co. v. Magee, 191 Ill. 84, 60 N. E. 802.....	682
Standard Tube & Fork Co. v. Union of Bicycle Workers et al. (1899), 7 Ohio N. P. R. 87.....	1026, 1038
Standiford v. Thompson, 135 Fed. 991.....	1328, 1334
Standish v. Dow, 21 Iowa, 363.....	1227, 1245
Standley v. Hendrie & Balthoff Mfg. Co., 27 Colo. 331, 61 Pac. 600.....	403
Standley v. Roberts, 59 Fed. 836, 19 U. S. App. 407, 8 C. C. A. 305.....	72, 84, 90
Stanford v. Hurlestone, L. R. 9 Ch. App. 116.....	826
Stanley v. Gadsby, 10 Pet. (35 U. S.) 521, 9 L. ed. 518.....	568
Stanley v. Holliday, 130 Ind. 464, 30 N. E. 634.....	1247, 1250
Stanley v. Pence, 160 Ind. 636, 66 N. E. 51, 67 N. E. 441.....	55
Stanley v. Pollard, 5 Misc. Rep. 490, 25 N. Y. Supp. 766.....	528
Stanley v. Supervisors, 121 U. S. 535, 7 Sup. Ct. 1234, 30 L. ed. 1000.....	658
Stanton v. Singleton, 126 Cal. 657, 59 Pac. 146, 47 L. R. A. 334.....	1279
Stanwood v. Wishard, 134 Fed. 959.....	53
Stanton v. Alabama & C. R. Co., 2 Woods, 506, Fed. Cas. No. 13,296.....	398, 404
Staples v. Rossi, 7 Idaho, 618, 65 Pac. 67.....	846
Staplyton v. Scott, 16 Ves. 272.....	1321
Star Brewery Co. v. Primas, 163 Ill. 652, 45 N. E. 145.....	515, 506
Stark v. Burke, 5 La. Ann. 740.....	219
Stark v. Starrs, 6 Wall. 409, 18 L. ed. 926.....	1242
Stark v. Wilder, 36 Vt. 752.....	1351
Starkie v. Richmond, 155 Mass. 188, 29 N. E. 770.....	854, 855
Starling v. Brown, 7 Bush, 164.....	94 96, 97, 101
Starr v. Chicago, R. I. & P. Ry. Co., 110 Fed. 3.....	583, 1080
Starr v. Woodberry etc. Works (N. J. Ch.), 48 Atl. 911.....	872
State v. Active Bldg. & Loan Assn., 102 Mo. App. 675, 77 S. W. 171.....	409
State v. Alexander, 107 Iowa, 177, 77 N. W. 841.....	590
State v. Aloe, 152 Mo. 466, 54 S. W. 494.....	591
State v. American etc. Assn., 64 Minn. 349, 67 N. W. 1.....	538
State v. Bader, 56 Ohio St. 718, 47 N. E. 564.....	729
State v. Bailey, 18 Mont. 554, 46 Pac. 1116.....	589
State v. Ball, 5 Wash. 387, 34 Am. St. Rep. 866, 31 Pac. 975.....	300, 303
State v. Bankers' Union of the World (Neb.), 99 N. W. 531.....	553
State v. Bank of New England, 55 Minn. 139, 56 N. W. 575.....	241
State v. Bank of Ottumwa, 76 Mo. 715.....	382
State v. Blize, 37 Or. 404, 61 Pac. 735.....	1162
State v. Brobston, 94 Ga. 95, 47 Am. St. Rep. 138, 21 S. E. 146.....	369
State v. Carlson (Neb.), 101 N. W. 1004.....	589

State v. Carpenter, 51 Ohio St. 83, 46 Am. St. Rep. 556, 37 N. E. 261.....	1395, 1396
State v. Churchill, 48 Ark. 426, 3 S. W. 352, 880.....	1517
State v. Commissioners, 39 Ohio St. 58.....	598
State v. County Court of Saline County, 51 Mo. 350, 11 Am. Rep. 454.....	612
State v. Crawford, 28 Kan. 726, 52 Am. Rep. 182....	796, 895, 896, 928
State v. Cunningham, 81 Wis. 440, 51 N. W. 724, 15 L. R. A. 561.....	587, 588
State v. Cunningham, 83 Wis. 90, 35 Am. St. Rep. 27, 53 N. W. 35, 17 L. R. A. 145.....	587, 588
State v. District Court, 22 Mont. 241, 56 Pac. 281.....	262, 266
State v. Duffel, 32 La. Ann. 649.....	590
State v. Dyer, 67 Vt. 690, 32 Atl. 814.....	1039
State v. Eighth Judicial Dist. Ct., 14 Mont. 577, 37 Pac. 969....	199
State v. Ellis, 45 La. Ann. 1418, 14 South. 308.....	307
State v. Engelmann, 86 Mo. 551.....	1099
State v. First Nat. Bank, 89 Ind. 302.....	1395
State v. Fisher, 18 Mont. 560, 46 Pac. 1117.....	589
State v. Gambs, 68 Mo. 289.....	357, 358
State v. Gibbs, 13 Fla. 55, 7 Am. Rep. 233.....	579
State v. Glidden, 55 Conn. 46, 3 Am. St. Rep. 33, 8 Atl. 890....	1039
State v. Graham, 9 Wash. 528, 36 Pac. 1085.....	293
State v. Graves, 66 Neb. 17, 92 N. W. 144.....	484, 850
State v. Greenway, 92 Iowa, 472, 61 N. W. 239.....	796, 928
State v. Herreid, 10 S. D. 16, 71 N. W. 319.....	590
State v. Hill, 50 Ark. 458, 8 S. W. 401.....	1120
State v. Jacksonville P. & M. R. Co., 15 Fla. 201.....	261, 266, 276
State v. Johnson, 18 Mont. 584, 46 Pac. 533.....	589
State v. Johnson, 18 Mont. 556, 46 Pac. 440.....	588
State v. Judge, 48 La. Ann. 1501, 21 South. 94.....	592
State v. Judge, 52 La. Ann. 103, 26 South. 769.....	803, 818
State v. King, 46 La. Ann. 78, 14 South. 423, 425.....	867
State v. Kumpff, 62 Mo. App. 332.....	66
State v. Lawler, 85 Iowa, 564, 52 N. W. 490.....	928
State v. Lord, 28 Or. 498, 43 Pac. 471, 31 L. R. A. 473.....	581, 586
State v. Marston, 64 N. H. 603, 15 Atl. 222.....	796, 928
State v. Matley, 17 Neb. 564, 24 N. W. 200.....	1097
State v. Maury, 2 Del. Ch. 141.....	487
State v. Mayor etc. of Mobile, 5 Port. (Ala.) 279, 30 Am. Dec. 564.....	927
State v. McGlynn, 20 Cal. 233, 81 Am. Dec. 118.....	1083
State v. Meek, 112 Iowa, 338, 84 Am. St. Rep. 342, 84 N. W. 3, 51 L. R. A. 414.....	930
State v. Minnesota Thresher Mfg. Co., 40 Minn. 213, 41 N. W. 1020, 3 L. R. A. 510.....	541
State v. Moran, 24 Mont. 433, 63 Pac. 390.....	589
State v. New Orleans, 43 La. Ann. 829, 9 South. 643....	261, 263, 274
State v. New Orleans, 50 La. Ann. 880, 24 South. 666.....	610, 630
State v. Northern Cent. Ry. Co., 18 Md. 193.....	817
State v. Noyes, 30 N. H. 279.....	796, 928
State v. Osborne, 143 Ind. 671, 42 N. E. 921.....	1438
State v. Parsons, 147 Ind. 579, 62 Am. St. Rep. 430, 47 N. E. 17.....	1411
State v. Patterson, 14 Tex. Civ. App. 465, 37 S. W. 478.....	796, 927

State v. Pennoyer , 23 Or. 205, 37 Pac. 906, 41 Pac. 1104, 25 L. R. A. 862.....	581, 586
State v. Port Royal & A. R. Co. , 84 Fed. 67.....	350
State v. Port Royal etc. Ry. Co. , 45 S. C. 413, 23 S. E. 363.....	389
State v. Quinn , 74 N. C. 359.....	1519
State v. Reek , 18 Mont. 557, 46 Pac. 438.....	589
State v. Rice , 67 S. C. 236, 45 S. E. 153.....	590
State v. Rivers , 60 Iowa, 381, 13 N. W. 73, 14 N. W. 738.....	286
State v. Rombauer , 46 Mo. 155.....	1395
State v. Ross , 122 Mo. 435, 25 S. W. 947, 23 L. R. A. 534.....	114, 118, 208
State v. Rost , 59 La. Ann. 995, 23 South. 978.....	836
State v. Rost , 47 La. 53, 16 South. 776.....	590
State v. Rotwitt , 18 Mont. 502, 46 Pac. 370.....	589
State v. Saline County Court , 51 Mo. 350, 11 Am. Rep. 454.....	622
State v. Saunders , 66 N. H. 39, 25 Atl. 588, 18 L. R. A. 646.....	796, 896, 897, 928
State v. Second Judicial Dist. Ct. , 13 Mont. 416, 34 Pac. 609.....	154
State v. Second Judicial District Court , 15 Mont. 324, 48 Am. St. Rep. 682, 27 L. R. A. 392, 39 Pac. 316.....	213, 217
State v. Second Judicial Dist. Court , 20 Mont. 284, 50 Pac. 852.....	273
State v. Seeverson , 88 Iowa, 714, 54 N. W. 347.....	928
State v. Sommerville , 104 La. 74, 28 South. 977.....	763
State v. Stewart , 59 Vt. 273, 59 Am. Rep. 710, 9 Atl. 559.....	1039
State v. Sullivan , 120 Ind. 197, 21 N. E. 1095, 22 N. E. 325.....	366
State v. Superior Court , 14 Wash. 686, 45 Pac. 670.....	1442
State v. Superior Court , 15 Wash. 688, 55 Am. St. Rep. 907, 47 Pac. 31.....	247
State v. Superior Court , 34 Wash. 123, 74 Pac. 1070.....	263
State v. Superior Court of Chehalis County , 8 Wash. 210, 35 Pac. 1087, 25 L. R. A. 354, 38 Cent. Law Jour. 341.....	293, 319
State v. Superior Court of Kings County , 11 Wash. 63, 39 Pac. 244.....	293, 319
State v. Superior Court of Milwaukee County , 105 Wis. 651, 81 N. W. 1046, 48 L. R. A. 819.....	602, 605
State v. Superior Court of Snohomish County , 7 Wash. 77, 34 Pac. 430.....	293, 319
State v. Superior Court of Snohomish County , 17 Wash. 12, 61 Am. St. Rep. 893, 48 Pac. 741.....	592
State v. Superior Court of Whatcom County , 14 Wash. 324, 44 Pac. 542.....	203
State v. Thorson , 9 S. D. 149, 68 N. W. 202, 33 L. R. A. 582.....	588
State v. Thum , 6 Idaho, 323, 55 Pac. 858.....	366
State v. Tiedemann , 69 Mo. 306, 33 Am. Rep. 498.....	1130
State v. Tooker , 18 Mont. 540, 46 Pac. 530, 34 L. R. A. 315.....	589
State v. Union Nat. Bank , 145 Ind. 537, 57 Am. St. Rep. 209, 44 N. E. 585.....	109, 117, 186, 265, 272
State v. Van Beek , 87 Iowa, 569, 43 Am. St. Rep. 397, 54 N. W. 525.....	591
State v. Van Vliet , 92 Iowa, 476, 61 N. W. 241.....	928
State v. Warren Foundry , 32 N. J. L. 439.....	1395
State v. Weiskittle , 61 Md. 49.....	1106
State v. Williams , 39 Kan. 517, 18 Pac. 727.....	1165
State v. Withrow , 154 Mo. 397, 55 S. W. 460.....	591
State v. Wolfenden , 74 N. C. 103.....	590
State v. Wood , 155 Mo. 425, 56 S. W. 474, 48 L. R. A. 596.....	577, 1084

State Bank v. Young, 2 Ind. 171, 52 Am. Dec. 501.....	1110
State Bank of Ceresco v. Belk (Neb.), 94 N. W. 617.....	1432, 1433
State Bank of Nebraska v. Rohren, 55 Neb. 223, 75 N. W. 543, 514, 515	
State Bank of Virginia v. Domestic S. M. Co., 99 Va. 411, 86	
Am. St. Rep. 891, 39 S. E. 141.....	393
State Central Sav. Bank v. Fanning Ball-Bearing Chain Co.,	
118 Iowa, 698, 92 N. W. 712.....	387, 388
State Ins. Co. v. Gennett, 2 Tenn. Ch. 82.....	69, 94
State Ins. Co. v. Waterhouse, 78 Iowa, 674, 43 N. W. 611.....	1116
State Investment and Insurance Co. v. Superior Court, 101 Cal.	
135, 35 Pac. 549.....	237
State Journal Co. v. Commonwealth Co., 43 Kan. 93, 22 Pac. 982..	230
Stateler v. California Nat. Bank, 77 Fed. 43.....	329, 333
State Mut. Fire Ins. Co. v. Updegraff, 21 Pa. St. 513, 519...1389, 1391	
State Nat. Bank v. Carson (Okla.), 50 Pac. 990.....	733
State Nat. Bank v. Vicroy, 24 Ky. Law Rep. 892, 70 S. W. 183..	1500
State Railroad Tax Cases, 92 U. S. 616, 23 L. ed. 663....	655, 656, 662
State Sav. Bank v. Harbin, 18 S. C. 425.....	1399, 1403
State Trust Co. v. Kansas City, P. & G. R. Co., 110 Fed. 10....	1079
State Trust Co. v. Kansas City P. & G. R. Co., 120 Fed. 398....	40
State Trust Co. v. Nat. L. I. & Mfg. Co., 72 Fed. 575.....	280
Statham v. Hall, 1 Turn. & R. 30.....	80, 81
Staunton v. Mary Baldwin Seminary, 99 Va. 653, 3 Va. Sup. Ct.	
Rep. 468, 39 S. E. 596.....	744
Stearns v. Page, 1 Story, 204, 215, 217, Fed. Cas. No. 13,339....	54
Stearns v. Page, 7 How. 819, 829, 12 L. ed. 928.....	54
Stearns v. Stearns, 66 Vt. 187, 44 Am. St. Rep. 836, 28 Atl. 875..	477
Stearns Paint Mfg. Co. v. Comstock, 121 Iowa, 430, 96 N. W. 869..	427
Stebbins v. Perry County, 167 Ill. 567, 47 N. E. 1048.....	1229
Stebbins v. Petty, 209 Ill. 291, 101 Am. St. Rep. 243, 70 N. E.	
673.....	1158
Steedman v. Weeks, 2 Strob. Eq. 146, 49 Am. Dec. 660.....	
.....	1188, 1214, 1216
Steel v. Holladay, 19 Or. 517, 25 Pac. 77.....	429
Steel Brick Siding Co. v. Muskegon etc. Co., 98 Mich. 616, 57	
N. W. 817.....	334
Steele v. Aspy, 128 Ind. 367, 27 N. E. 739.....	109
Steele v. Biggs, 22 Ill. 643....	1342
Steele v. Branch, 40 Cal. 1, 11.....	1342
Steele v. Cobham, L. R. 1 Ch. App. 325.....	165
Steele v. Municipal Signal Co., 160 Mass. 36, 35 N. E. 105.....	621
Steele v. Sturges, 5 Abb. Pr. 442.....	294
Steen v. March, 132 Cal. 616, 64 Pac. 994.....	1102
Steere v. Hoagland, 39 Ill. 264.....	1427
Steers v. Kranz, 32 Minn. 313 20 N. W. 241.....	505, 515
Stein v. McGrath, 128 Ala. 175, 30 South. 792.....	1185
Steinberger v. Independent Sav. Assn., 84 Md. 625, 36 Atl. 439..	207
Steiner v. Parker, 108 Ala. 357, 19 South. 386.....	1445
Steiner Land & Lumber Co. v. King, 118 Ala. 546, 24 South. 35..	1445
Steinman v. Vicars, 99 Va. 595, 39 S. E. 227.....	1227
Steinmetz v. Metropolitan El. R. R. Co. (Sup. Ct.), 18 N. Y. Supp.	
209.....	779
Stellmacher v. Bruder, 89 Minn. 507, 99 Am. St. Rep. 609, 95 N.	
W. 324.....	1358
Stenglein v. Beach, 128 Mich. 440, 8 Detroit Leg. N. 721, 87 N.	
W. 449.....	592

Stephen v. Schuckman, 32 Mo. App. 333...	370
Stephens v. Cady, 14 How. 528, 14 L. ed. 528.....	1414
Stephens v. Chadwick, 10 Kan. 406.....	1386
Stephens v. Kaga, 142 Ind. 523, 41 N. E. 930.....	157
Stephens v. Meek, 6 Lea (Tenn.), 226.....	1482
Stephens v. Meriden Britannia Co., 160 N. Y. 178, 73 Am. St. Rep. 678, 54 N. E. 781.....	375
Stephens v. Perrine, 143 N. Y. 476, 39 N. E. 11.....	375
Stephens v. Smith, 30 Ind. 120, 65 N. E. 546.....	687
Stephenson v. Burdett (W. Va.), 48 S. E. 846.....	86, 98
Stephenson v. Harris, 131 Ala. 470, 31 South. 445.....	1143
Stephenson v. Taverners, 9 Gratt. (Va.) 398.....	1490
Sterling, Appeal of, 111 Pa. St. 35, 56 Am. Rep. 246, 2 Atl. 105..	545
Sterling v. Littlefield, 97 Me. 479, 54 Atl. 1108.....	883, 884
Sterling v. Sterling, 43 Or. 200, 72 Pac. 741.....	1194
Sterling Gas Co. v. Higby, 134 Ill. 557, 25 N. E. 660.....	683
Sterling Iron etc. Co. v. Sparks Mfg. Co., 55 N. J. Eq. 824, 41 Atl. 1117.....	966
Sternberg v. Wolff, 56 N. J. Eq. 389, 67 Am. St. Rep. 494, 39 Atl. 397, 39 L. R. A. 762, reversing 56 N. J. Eq. 555, 42 Atl. 1078..	223
Sternberger v. McGovern, 56 N. Y. 12.....	1369, 1371
Stetson v. Chicago & E. R. Co., 75 Ill. 74.....	774
Stetson v. Cook, 39 Mich. 750.....	1245
Stetson v. Stevens, 64 Vt. 649, 25 Atl. 429.....	848
Steuart v. Meyer, 54 Md. 454, 467.....	1233
Stevens v. Annex Realty Co., 173 Mo. 511, 73 S. W. 505.....	500
Stevens v. Central Nat. Bank, 144 N. Y. 50, 39 N. E. 68.....	1127
Stevens v. Church, 41 Conn. 369.....	1402
Stevens v. Coburn, 71 Vt. 261, 44 Atl. 354.....	1527
Stevens v. Davison, 18 Gratt. 819, 98 Am. Dec. 692.....	248, 249
Stevens v. De La Vaulx, 166 Mo. 20, 65 S. W. 1003.....	1191
Stevens v. Enders, 1 Green (13 N. J. L.), 273.....	1186, 1194
Stevens v. Erie R. Co., 29 Vt. 545.....	542
Stevens v. Gladding, 58 U. S. (17 How.) 447, 15 L. ed. 155....	985
Stevens v. Grand Central Min. Co. (C. C. A.), 133 Fed. 28..	36, 37, 39
Stevens v. Holman, 112 Cal. 345, 53 Am. St. Rep. 216, 44 Pac. 670.....	1147
Stevens v. Keating, 2 Phill. 333.....	982
Stevens v. Missouri K. & T. Ry. Co., 106 Fed. 771, 45 C. C. A. 611.....	543
Stevens v. Perry, 113 Mass. 380.....	1536
Stevens v. Reeves, 138 Cal. 678, 72 Pac. 346.....	1227
Stevens v. Rose, 69 Mich. 259, 37 N. W. 205, 210.....	812, 813
Stevens v. St. Mary's Training School, 144 Ill. 336, 36 Am. St. Rep. 438, 32 N. E. 962, 18 L. R. A. 832, 36 Cent. Law Jour. 275, 27 Am. Law Rev. 618.....	597, 609
Stevens v. Stevens, 52 Mass. (11 Met.) 251, 45 Am. Dec. 203....	873
Stevens Linen Works v. William & John Don & Co., 121 Fed. 171.	994
Stevenson v. Anderson, 2 Ves. & B. 407.....	97
Stevenson v. Maxwell, 2 N. Y. 408, 415.....	1333
Stevenson v. New York L. I. Co., 10 App. Div. 233, 41 N. Y. Supp. 964.....	68
Stevenson v. Pucci, 32 Misc. Rep. 464, 66 N. Y. Supp. 712.....	870, 871, 931
Steward v. Winters, 4 Sandf. Ch. 587.....	513, 808

Stewart, Appeal of, 56 Pa. St. 242.....	1195
Stewart v. Alleghany Nat. Bank, 101 Pa. St. 342.....	1205
Stewart v. Alliston, 1 Mer. 26, 32.....	1257
Stewart v. Beebee, 28 Barb. 34.....	363
Stewart v. Chesapeake etc. Canal Co., 5 Fed. 149, 4 Hughes, 47..	230
Stewart v. Chicago General St. Ry. Co., 166 Ill. 61, 46 N. E. 765..	774
Stewart v. Commissioners of Wyandotte Co., 45 Kan. 708, 23 Am. St. Rep. 746, 26 Pac. 683.....	693, 697
Stewart v. Crysler, 100 N. Y. 378, 3 N. E. 471.....	1237
Stewart v. Duncan, 40 Minn. 410, 42 N. W. 89.....	469, 1104
Stewart v. English, 6 Ind. 176, 182.....	1415
Stewart v. Erie & W. T. Co., 17 Minn. 372.....	542
Stewart v. Fallon (N. J. Eq.), 58 Atl. 96.....	95
Stewart v. Hook, 118 Ga. 445, 45 S. E. 369.....	490
Stewart v. Kennedy, L. R. 15 App. Cas. 75, 105.....	1304
Stewart v. Kerr, 1 Morris (Iowa), 318.....	1515
Stewart v. McMartin, 5 Barb. 438.....	1171
Stewart v. Pierce, 116 Iowa, 733, 89 N. W. 234.....	521
Stewart v. Snow (Ind. Ter.), 82 S. W. 696.....	1123
Stewart Wire Co. v. Lehigh Coal etc. Co., 203 Pa. St. 474, 53 Atl. 352.....	908
Stiles v. Guthrie, 3 Okla. 26, 41 Pac. 383.....	731
Stillwater Water Co. v. Farmer, 89 Minn. 58, 99 Am. St. Rep. 541, 93 N. W. 907, 60 L. R. A. 875.....	898, 899, 971
Stillwell v. Savannah Grocery Co., 88 Ga. 100, 13 S. E. 963....	111, 198, 200, 202
Stillwell-Bierce etc. Co. v. Williamston etc. Co., 80 Fed. 68....	186
Stilwell v. Wilkins, Jac. Ch. 280.....	156
Stirling v. Forrester, 3 Bligh, 575.....	1482
Stith v. Jones, 101 N. C. 360, 8 S. E. 151.....	158, 159
Stix v. Chayton, 55 Ark. 122, 17 S. W. 708.....	1452
Stock v. Jefferson Tp., 114 Mich. 357, 72 N. W. 132, 38 L. R. A. 355.....	907, 909
Stocker v. Broekelbank, 3 Macn. & G. 250.....	521
Stocker v. Wedderbarn, 3 Kay & J. 393, 404.....	1299
Stock-Growers' Bank v. Newton, 13 Colo. 245, 22 Pac. 444....	1232
Stockman v. Wallis, 30 N. J. Eq. 449.....	172
Stockton v. American Tobacco Co., 55 N. J. Eq. 352, 36 Atl. 971.....	551, 552
Stockton v. Central R. Co., 50 N. J. Eq. 52, 24 Atl. 964, 17 L. R. A. 97.....	538, 539, 540, 1052
Stockton v. Central R. Co., 50 N. J. Eq. 489, 25 Atl. 942....	249, 259
Stockton v. Harmon, 32 Fla. 312, 13 South. 833.....	261, 266, 276
Stockwell v. Mutual Life Ins. Co., 140 Cal. 198, 98 Am. St. Rep. 25, 73 Pac. 833.....	1485
Stoddart v. Burge, 53 Cal. 394.....	1247, 1250
Stofflet v. Stofflet, 160 Pa. St. 529, 28 Atl. 857.....	524, 526
Stokes v. Knarr, 11 Wis. 389.....	1120
Stokes v. New Jersey Pottery Co., 46 N. J. L. 237.....	374
Stolze v. Milwaukee & L. W. R. Co., 104 Wis. 47, 80 N. W. 68.....	338, 764
Stone v. Anderson, 26 N. H. 506.....	1430
Stone v. Bank of Kentucky, 174 U. S. 799, 19 Sup. Ct. 881, 43 L. ed. 1177.....	644, 657
Stone v. Dodge, 96 Mich. 514, 56 N. W. 75, 21 L. R. A. 280....	369

Stone v. Franklin, 89 Ga. 195, 15 S. E. 47.....	1134
Stone v. Goss, 65 N. J. Eq. 756, 55 Atl. 736.....	490
Stone v. Hammell, 83 Cal. 547, 17 Am. St. Rep. 772, 23 Pac. 703..	1479
Stone v. Manning, 2 Scam. 534, 35 Am. Dec. 119.....	1434
Stone v. Reed, 152 Mass. 179, 25 N. E. 49.....	80, 94
Stone v. Roscommon etc. Co., 59 Mich. 24, 26 N. W. 216.....	925
Stone v. Tyler, 173 Ill. 147, 50 N. E. 688.....	187
Stone v. Westcott, 18 R. I. 517, 28 Atl. 662.....	1432
Stone v. Wetmore, 42 Ga. 601.....	593
Stone v. Wishart, 2 Madd. 67.....	280
Stonebridge v. Perkins, 141 N. Y. 1, 35 N. E. 980.....	375
Stoner v. Mau, 11 Wyo. 366, 72 Pac. 193, 73 Pac. 548.....	970
Storck v. Metropolitan El. R. Co., 131 N. Y. 514, 30 N. E. 497..	781
Storer v. Great Western Ry. Co., 2 Younge & C. Ch. 48....	1277, 1280
Storey v. Johnson, 1 Younge & C. 538.....	1208
Storey v. Murphy, 9 N. D. 115, 81 N. W. 23.....	629, 632
Storm v. Ermantrout, 89 Ind. 214.....	167
Storm v. Mann, 4 Johns. Ch. (N. Y.) 21.....	843
Storm v. Waddell, 2 Sandf. Ch. 494.....	1452, 1453
Storms v. Storms, 3 Bush, 77.....	1494
Storrs v. Pensacola & A. R. Co., 29 Fla. 617, 11 South. 226.....	1119
Story v. Gammell (Neb.), 94 N. W. 982.....	1145
Story v. Johnson, 1 Younge & C. 538.....	1214
Story v. Johnson, 2 Younge & C. 586.....	1210, 1213
Story v. New York etc. R. R. Co., 90 N. Y. 122, 43 Am. Rep. 146.....	777
Story v. Norwich etc. Co., 24 Conn. 94.....	1271
Stout v. Cook, 37 Ill. 283.....	1226
Stout v. La Follette, 64 Ind. 365.....	1129
Stout v. Seabrook, 30 N. J. Eq. 187.....	1533
Stout v. Slocum, 52 N. J. Eq. 88, 28 Atl. 7....	1119
Stovall v. Border Grange Bank, 78 Va. 188.....	1426
Stovall v. McCutchen, 107 Ky. 577, 92 Am. St. Rep. 373, 54 S. W. 969, 47 L. R. A. 287.....	534
Stow v. Russell, 36 Ill. 18.....	1342
Stowell v. Tucker, 7 Idaho 312, 62 Pac. 1033.....	922
Straman v. Rehtine, 58 Ohio St. 443, 51 N. E. 44.....	1499, 1500
Strang v. Richmond, T. & C. R. Co., 93 Fed. 71.....	498
Strange v. Bell, 11 Ga. 103.....	65, 69, 70
Strasser v. Moonelis, 108 N. Y. 611, 15 N. E. 730.....	482
Stratford v. Greenboro, 124 N. C. 127, 32 S. E. 394.....	765
Strathmore v. Bowes, 2 Bro. C. C. 88.....	813
Stratton v. Stratton, 58 N. H. 473, 42 Am. Rep. 604.....	1259
Straub v. Simpson, 74 Mo. App. 230.....	1128
Strauss v. Carolina Interstate B. & L. Assn., 117 N. C. 308, 53 Am. St. Rep. 585, 23 S. E. 450, 30 L. R. A. 693, 118 N. C. 556, 24 S. E. 116.....	390
Strawberry etc. Co. v. Chipman, 13 Utah, 454, 45 Pac. 348.....	828
Strayer v. Dickerson, 205 Ill. 257, 68 N. E. 767.....	1144
Street v. Alden, 62 Minn. 160, 52 Am. St. Rep. 632, 64 N. W. 157.....	1096
Street v. Anderton, 4 Bro. C. C. 415....	153
Street v. Benner, 20 Fla. 700.....	1200
Street v. Henry, 124 Ala. 153, 27 South. 411.....	45
Street v. Maryland Cent. R. Co., 59 Fed. 25.....	415
Street v. McConnell. 16 Ill. 126.....	1215

Streeter v. Stalnaker, 61 Neb. 205, 85 N. W. 47.....	871, 930
Streight v. Durham, 10 Okla. 361, 61 Pac. 1096.....	732
Streight v. Junk, 59 Fed. 321, 8 C. C. A. 137, 16 U. S. App. 608	
.....	49, 1424
Streissguth v. Geib, 67 Minn. 360, 69 N. W. 1097.....	588, 628
Strelly v. Winson, 1 Vern. 297.....	1522
Stretch v. Schenck, 23 Ind. 77.....	1335
Strickland v. Knight (Fla.), 36 South. 363.....	611
Strickland v. National Salt Co., 88 N. Y. Supp. 323, 43 Misc. Rep. 172.....	400
Strickland v. Strickland, 6 Beav. 77.....	1183
Striker v. Mott, 2 Paige, 387, 22 Am. Dec. 646.....	1191, 1194
Stringer v. Keokuk etc. R. Co., 59 Iowa, 277, 13 N. W. 308....	1163
Strobel v. Kerr Salt Co., 104 N. Y. 303, 79 Am. St. Rep. 643, 58 N. E. 142, 51 L. R. A. 687.....	869, 967
Strobridge Lith. Co. v. Crane, 58 Hun, 611, 12 N. Y. Supp. 898..	521
Strom v. American Freehold Land Mort. Co., 42 S. C. 97, 20 S. E. 16.....	566
Strong v. Carlyle Press, [1893] 1 Ch. 268.....	231
Strong v. Clem, 12 Ind. 37, 74 Am. Dec. 200.....	1171
Strong v. Epstein, 14 Abb. N. C. 322.....	260, 264
Strong v. Goldman, 8 Biss. 552, Fed. Cas. No. 13,542.....	189
Strong v. Harris, 84 Hun, 314, 32 N. Y. Supp. 349.....	1184
Strong v. Mitchell, 19 Vt. 644.....	1482
Strong v. Richmond, P. & C. R. Co., 111 Fed. 511, 517.....	1276
Strother's Admr. v. Mitchell's Exr., 80 Va. 149.....	1492
Stroup v. Sullivan, 2 Ga. (2 Kelly) 275, 46 Am. Dec. 389.....	1096
Stroupe v. Bridger (Iowa), 90 N. W. 704.....	1148
Strout v. Portland, 26 Or. 294, 38 Pac. 126.....	737
Strutton v. Young, 15 Ky. Law Rep. 657, 25 S. W. 109.....	1440
Struve v. Childs, 63 Ala. 473.....	565
Stryker v. Lynch, 11 N. Y. Leg. Obs. 116.....	1183
Stuart v. Bair, 8 Baxt. 141.....	628
Stuart v. Boulware, 133 U. S. 78, 10 Sup. Ct. 244, 33 L. ed. 568..	426
Stuart v. Coalter, 4 Rand. 74, 15 Am. Dec. 731.....	1173, 1208
Stuart v. Hayden, 72 Fed. 402, 36 U. S. App. 462, 18 C. C. A. 618.....	1161
Stuart v. Palmer, 74 N. Y. 183, 30 Am. Rep. 289.....	1228, 1235
Stuart v. Pennis, 91 Va. 688, 22 S. E. 509.....	1266
Stubbings v. Durham, 210 Ill. 542, 71 N. E. 586.....	1286
Stubblefield v. Gadd, 112 Iowa, 681, 84 N. W. 917.....	1438
Stubbs v. Leavitt, 30 Ala. 352.....	1117
Stuckey v. Keefe's Ex., 26 Pa. St. 400.....	1189
Stuckwisch v. Holmes, 29 Ind. App. 512, 64 N. E. 894.....	1436
Studabaker v. Studabaker, 152 Ind. 89, 51 N. E. 933....	689, 690, 691
Stuparich Mfg. Co. v. Superior Court, 123 Cal. 290, 55 Pac. 985..	301
Sturch v. Young, 5 Beav. 357.....	165
Sturges v. Bridgman, L. R. 11 Ch. D. 852.....	870
Sturges v. Galindo, 59 Cal. 28, 31, 43 Am. Rep. 239.....	1299
Sturmer v. County Court etc. County, 42 W. Va. 724, 26 S. E. 532, 36 L. R. A. 300.....	941
Stuyvesant v. Early, 33 Misc. Rep. 644, 68 N. Y. Supp. 903....	959
Stuyvesant v. Pearsall, 15 Barb. 244.....	617
Styer v. Sprague, 63 Minn. 414, 65 N. W. 659.....	1230
Suart v. Welch, 4 Mylne & C. 305.....	84, 89
Sublett v. McKinney, 19 Tex. 438.....	1503, 1509

Suess v. Noble, 31 Fed. 855.....	1084
Suffolk etc. Co. v. San Miguel etc. Co., 9 Colo. App. 407, 48 Pac. 828.....	906, 912, 967
Sugar Co. v. Alberger, 22 Hun, 349, 353.....	95
Sullings v. Sullings, 9 Allen, 234.....	1271
Sullivan v. Barnard, 81 Fed. 886.....	343
Sullivan v. Browning (N. J.), 58 Atl. 302.....	883
Sullivan v. Dooley, 31 Tex. Civ. App. 589, 73 S. W. 82.....	872
Sullivan v. Finnegan, 101 Mass. 447.....	1226, 1232, 1235
Sullivan v. Gage (Cal.), 79 Pac. 537.....	431
Sullivan v. Jones etc. Co., 208 Pa. St. 540, 57 Atl. 1065.....	873
Sullivan v. Knights of F. M., 73 Mo. App. 43.....	95
Sullivan v. Kohlenberg, 31 Ind. App. 215, 67 N. E. 541.....	502
Sullivan v. Lumsden, 118 Cal. 664, 50 Pac. 777.....	1083
Sullivan v. McDonald, 86 Ga. 78, 12 S. E. 215.....	202
Sullivan v. Moorehead, 99 Cal. 157, 33 Pac. 796.....	1149
Sullivan v. Phillips, 110 Ind. 320, 11 N. E. 300.....	606
Sullivan v. Portland & K. Railroad Co., 94 U. S. 806, 24 L. ed. 324.....	62
Sullivan v. Postal Tel. Cable Co., 123 Fed. 411.....	987
Sullivan v. Royer, 72 Cal. 248, 1 Am. St. Rep. 51, 13 Pac. 655....	915
Sullivan v. Shell, 36 S. C. 578, 31 Am. St. Rep. 894, 15 S. E. 722...	1077
Sullivan v. Sullivan, 66 N. Y. 37.....	1187, 1194, 1195
Sullivan v. Venner, 63 Hun, 634, 18 N. Y. Supp. 398.....	548
Sullivan Election etc. Co. v. Blue, 142 Ind. 407, 41 N. E. 805.....	118, 261, 274
Sullivan Timber Co. v. City of Mobile, 110 Fed. 186.....	1086
Summers v. Beeler, 90 Md. 474, 78 Am. St. Rep. 446, 45 Atl. 19, 48 L. R. A. 54.....	503
Sunflower Oil Co. v. Wilson, 142 U. S. 313, 12 Sup. Ct. 235, 35 L. ed. 1025.....	292
Sun Printing & Publishing Assn. v. Delaney (1900), 48 N. Y. App. Div. 623, 62 N. Y. Supp. 750.....	1011, 1030
Suplee v. Callaghan, 200 Pa. St. 146, 49 Atl. 950.....	1410
Supplee Hardware Co. v. Driggs, 13 App. D. C. 272.....	1429
Supreme Commandery U. O. G. C. v. Merrick, 163 Mass. 374, 40 N. E. 183.....	76, 85
Supreme Conclave I. O. H. v. Dailey, 61 N. J. Eq. 145, 47 Atl. 277.....	92
Supreme Council of Legion of Honor v. Palmer, 107 Mo. App. 157, 80 S. W. 699.....	80, 98
Supreme Lodge O. M. P. v. Raddatz, 57 Ill. App. 119.....	95
Supreme Lodge, Order of Golden Chain v. Simering, 88 Md. 276, 71 Am. St. Rep. 409, 40 Atl. 723, 41 L. R. A. 720....	553
Supreme Lodge, Order of Select Friends v. Carey, 57 Kan. 655, 47 Pac. 621.....	1135
Supreme Sitting of the Order of Iron Hall v. Baker, 134 Ind. 293, 33 N. E. 1128, 20 L. R. A. 210.....	213, 239
Susquehanna Bank v. Supervisors of Broome Co., 25 N. Y. 312...	720
Susquehanna Fertilizer Co. v. Malone, 73 Md. 268, 25 Am. St. Rep. 595, 20 Atl. 900, 9 L. R. A. 737.....	925
Sutliff v. Smith, 58 Kan. 559, 50 Pac. 455.....	1230
Sutphen v. Fowler, 9 Paige, 280.....	30
Sutro v. Wagner, 23 N. J. Eq. 388.....	1526
Sutter v. Heckman, 1 Alaska, 81.....	959
Sutter v. San Francisco, 36 Cal. 115.....	1203
Sutton v. Edwards, 5 Ired. Eq. 425.....	1210

Sutton v. Head, 86 Ky. 156, 9 Am. St. Rep. 274, 5 S. W. 410....	506
Sutton v. Jones, 15 Ves. 584.....	279
Sutton v. Lord Montfort, 4 Sim. 565.....	879
Sutton v. Sutton, 26 S. C. 33, 1 S. E. 19.....	1212
Suydam v. Dequindre, Harr. Ch. (Mich.), 347.....	162
Suydam v. Voorhees, 58 N. J. Eq. 157, 43 Atl. 4.....	1493
Svanburg v. Fossen, 75 Minn. 350, 74 Am. St. Rep. 490, 78 N. W. 4, 43 L. R. A. 427.....	1358
Swain v. Bartlett, 82 Mo. App. 642.....	80, 81
Swain v. Burnett, 89 Cal. 564, 26 Pac. 1093.....	1356
Swaine v. Great Northern Ry. Co., 4 De Gex. J. & S. 211, 216....	863
Swaine v. Perine, 5 Johns. Ch. 482, 9 Am. Dec. 318.....	1167, 1168, 1169, 1170, 1485
Swaishland v. Dearsley, 29 Beav. 430.....	1302
Swales v. Jackson, 126 Ind. 282, 26 N. E. 62.....	1350
Swan, In re, 150 U. S. 637, 14 Sup. Ct. 225, 37 L. ed. 1207.....	302, 303, 323
Swan v. Mitchell, 82 Iowa, 307, 47 N. W. 1042.....	174
Swan v. Swan, 8 Price, 518.....	1198, 1211
Sweeney v. Hanley, 126 Fed. 97.....	815
Sweeney v. Webb (Tex. Civ. App.), 76 S. W. 766.....	589
Sweeny v. Mayhew, 6 Idaho, 455, 56 Pac. 85.....	117
Sweet v. Boyd, 6 Okla. 699, 52 Pac. 939.....	731
Sweet v. Redhead, 76 Ill. 374.....	1400
Sweet & Clark Co. v. Union Nat. Bank, 149 Ind. 305, 49 N. E. 159.....	180
Sweetser v. Silber, 87 Wis. 102, 58 N. W. 239.....	1421
Swepton v. Rouse, 65 N. C. 34, 37, 6 Am. Rep. 735.....	1386
Swett v. Cutts, 50 N. H. 439, 9 Am. Rep. 276.....	893
Swett v. Swett, 49 N. H. 264.....	1215
Swift v. Kortrecht, 112 Fed. 709, 50 C. C. A. 429.....	1402
Swift v. Smith, 79 Fed. 709, 713, 25 C. C. A. 154, 49 U. S. App. 188.....	54, 56
Swift v. Swift, 3 Ir. Eq. 267.....	1267
Swift v. United States (Jan. 30, 1905), 196 U. S. 375, 25 Sup. Ct. 276, 49 L. ed. —.....	1053
Swifts v. Arents, 4 Cal. 390.....	1408
Swigert v. Tilden, 121 Iowa, 650, 100 Am. St. Rep. 374, 97 N. W. 82.....	523
Swing v. White River Lumber Co., 91 Wis. 517, 65 N. W. 174....	354, 362, 440
Switzer v. Gardner, 41 Mich. 164, 2 N. W. 191.....	1258
Swope v. Villard, 61 Fed. 417.....	334, 339
Sykes v. Hastings, 11 Ves. 363.....	279
Sylvester v. Jerome, 19 Colo. 128, 34 Pac. 760.....	853
Sylvester v. Reed, 3 Edw. Ch. (N. Y.) 296.....	190
Sylvester Coal Co. v. City of St. Louis, 130 Mo. 323, 51 Am. St. Rep. 566, 32 S. W. 649.....	632, 634
Symonds v. Hallett, L. R. 24 Ch. D. 346.....	494
Syracuse City Bank v. Tallman, 31 Barb. 201.....	167, 168, 172
Syracuse Solar Salt Co. v. Rome, W. & O. R. Co., 67 Hun, 153, 22 N. Y. Supp. 321.....	786

T

Tabler v. Wiseman, 2 Ohio St. 207.....	1182, 1195
Tabor v. Cook, 15 Mich. 322.....	1244
Tabor v. Hoffman, 118 N. Y. 30, 16 Am. St. Rep. 740, 23 N. E. 12.....	400

Tacoma v. Bridges, 25 Wash. 221, 65 Pac. 186.....	580
Taff Vale Ry. v. Nixon, 1 H. L. Cas. 110.....	1518
Taff Vale Ry. v. Society of Ry. Servants, [1901] App. Cas. 426.....	1009, 1010, 1015, 1044
Taft v. Taft, 73 Mich. 502, 41 N. W. 481.....	1358
Tainter v. Lucas, 29 Wis. 375.....	752
Tait v. Carey (Ind. Ter.), 49 S. W. 50.....	277
Tait v. Jenkins, 1 Younge & C. Ch. 492.....	160
Talbot v. Ford, 13 Sim. 173, 175.....	1314
Talbot v. Hope Scott, 4 Kay & J. 96.....	153, 154, 155, 842
Talbot v. New York & H. R. Co., 151 N. Y. 155, 45 N. E. 382.....	782
Talcott v. Buffalo, 125 N. Y. 280, 26 N. E. 263.....	619, 620
Talladega Mercantile Co. v. Jenifer Iron Co., 102 Ala. 259, 14 South. 743.....	288, 290, 329, 347, 1446
Tallahassee Mfg. Co. v. Spigener, 49 Ala. 262.....	665
Talley v. Curtain, 54 Fed. 43, 8 U. S. App. 347, 4 C. C. A. 177; affirmed 58 Fed. 4, 7 C. C. A. 1, 8 U. S. App. 424.....	1429, 1430, 1451
Tallmadge v. East River Bank, 26 N. Y. 105.....	503, 511
Tallmann v. Gaillard, 27 Misc. Rep. 114, 57 N. Y. Supp. 419.....	1026
Tamplin v. James, L. R. 15 Ch. D. 215.....	1303, 1304, 1305
Tannenbaum v. New York Fire Ins. Exchange, 33 Misc. Rep. 134, 68 N. Y. Supp. 342.....	1051
Tanner v. European Bank, L. R. 1 Ex. 261.....	89, 101
Tanner v. Lindell Ry. Co., 180 Mo. 1, 103 Am. St. Rep. 534, 79 S. W. 155.....	543
Tanner v. Niles, 1 Barb. 560.....	1182
Tantum v. Green, 21 N. J. Eq. 364.....	1417
Tapana v. Shaffray, 97 Mo. App. 337, 71 S. W. 119.....	1099
Tapley v. Herman, 95 Mo. App. 537, 69 S. W. 482.....	1139
Tappan v. Gray, 9 Paige, 507.....	593
Tarabino v. Nicoli, 5 Colo. App. 545, 39 Pac. 362.....	1527
Tarbell v. Griggs, 3 Paige, 207, 33 Am. Dec. 790.....	1417, 1427
Tarbell v. Tarbell, 10 Allen, 278.....	1271
Tarkington v. Purvis, 128 Ind. 182, 25 N. E. 879, 9 L. R. A. 607.....	1160, 1161, 1162, 1165
Tarvin v. Walker's Creek etc. Co., 109 Ky. 579, 60 S. W. 185.....	154
Tarwater v. Going (Ala.), 37 South. 330.....	1232
Tash v. Adams, 10 Cush. 252.....	468, 621, 631
Tate v. Field, 57 N. J. Eq. 53, 40 Atl. 206.....	803, 815
Tate v. Goff, 89 Ga. 184, 15 S. E. 30.....	1182
Tate v. Tate, 35 Ark. 289.....	1539
Tate v. Tate, 1 Dev. & B. Eq. 22.....	1171
Tatum v. Brooker, 51 Mo. 148.....	1352
Tatum v. Rosenthal, 95 Cal. 129, 29 Am. St. Rep. 97, 30 Pac. 136.....	1451
Tauton v. Groh, 4 Abb. App. 358.....	100
Tawas B. etc. R. R. Co. v. Tosco Cir. Judge, 44 Mich. 479, 7 N. W. 65.....	849
Tayloe v. Merchants' Fire Ins. Co., 9 How. 390, 13 L. ed. 187.....	1269, 1270
Taylor v. Benham, 5 How. (U. S.) 233, 12 L. ed. 130.....	1519
Taylor v. Bliley, 86 Ga. 154, 12 S. E. 210.....	143
Taylor v. Boyd, 3 Ohio, 337, 17 Am. Dec. 603.....	17, 18
Taylor v. Bradshaw, 22 Ky. (6 T. B. Mon.) 145, 17 Am. Dec. 132.....	1101
Taylor v. Branscombe, 74 Iowa, 534, 38 N. W. 400.....	1430, 1431
Taylor v. Brown, 2 Beav. 149.....	1339, 1340
Taylor v. Canady, 155 Ind. 671, 57 N. E. 524, 59 N. E. 20.....	355, 360, 364

Taylor v. Carpenter, 2 Sandf. Ch. 603, 11 Paige, 292, 42 Am. Dec. 114.....	990
Taylor v. Carpenter, 3 Story, 458, Fed. Cas. No. 13,784.....	990
Taylor v. Carryl, 2 How. 583, 15 L. ed. 1028.....	324
Taylor v. Clark, 89 Fed. 7.....	843
Taylor v. Collins, 51 Wis. 123, 8 N. W. 22.....	816, 817
Taylor v. Columbian Ins. Co., 14 Allen, 353.....	443
Taylor v. Crawfordsville, 155 Ind. 403, 58 N. E. 490.....	690
Taylor v. Cummings, 127 Fed. 108, 62 C. C. A. 108.....	1466
Taylor v. Davey, 55 Neb. 153, 75 N. W. 553.....	611
Taylor v. Eckersley, L. R. 2 Ch. Div. 302.....	119
Taylor v. Eckersley, L. R. 5 Ch. Div. 740.....	256
Taylor v. Fields, 4 Ves. 396.....	1535
Taylor v. Gillean, 23 Tex. 508.....	308
Taylor v. Gillies, 59 N. Y. 331, 17 Am. Rep. 333.....	991
Taylor v. Girard Life Ins. Co., 1 App. Cas. (D. C.) 209.....	1499
Taylor v. Glens Falls Ins. Co., 44 Fla. 273, 32 South. 887.....	1149
Taylor v. Grange, 49 L. J. Ch. D. 794.....	1191
Taylor v. Hill, 115 Cal. 143, 44 Pac. 336, 46 Pac. 922.....	345
Taylor v. Jones, 2 Atk. 600.....	1415
Taylor v. Kercheval, 82 Fed. 497.....	594, 595
Taylor v. King, 32 Mich. 42.....	1202
Taylor v. Lander, 61 Kan. 588, 60 Pac. 320.....	1410
Taylor v. Lewis, 25 Ky. 400, 19 Am. Dec. 135.....	1114
Taylor v. Life Assn. of America, 3 Fed. 465.....	276, 279
Taylor v. Life Assn. of America, 13 Fed. 493.....	449
Taylor v. Longworth, 14 Pet. 172, 174, 10 L. ed. 405.....	1335, 1337
Taylor v. Louisville & N. R. Co., 88 Fed. 350, 31 C. C. A. 537....	646, 654, 656, 659, 660
Taylor v. Montreal Harbor Commrs., 17 Rap. Jud. Que. C. S. 275.....	580
Taylor v. Neate, 39 Ch. Div. 538.....	142, 143
Taylor v. Pearce, 71 Ill. App. 525.....	832
Taylor v. Philadelphia & R. R. Co., 9 Fed. 1.....	435
Taylor v. Pine Bluff, 34 Ark. 603.....	666
Taylor v. Porter, 7 Mass. 355.....	1485
Taylor v. Portsmouth etc. Co., 91 Me. 193, 64 Am. St. Rep. 216, 39 Atl. 560.....	932
Taylor v. Reynolds, 53 Cal. 686.....	1488
Taylor v. Satterthwaite, 22 N. Y. Supp. 187, 2 Misc. Rep. 441....	72
Taylor v. Sawyer Spindle Co., 75 Fed. 301, 304, 22 C. C. A. 203, 206.....	50, 981
Taylor v. Seiter, 199 Ill. 555, 65 N. E. 433.....	1442
Taylor v. Slater, 21 R. I. 104, 41 Atl. 1001.....	45
Taylor v. Sweet, 40 Mich. 736.....	394
Taylor v. Tarr, 84 Mo. 420.....	1494
Taylor v. Taylor, 28 L. T. Rep. 189.....	1531, 1532
Taylor v. Taylor, 8 B. Mon. (Ky.) 419, 48 Am. Dec. 400.....	1510
Taylor v. Thompson, 42 Ill. 9.....	680
Taylor v. Thompson, 2 Heisk. 89.....	1521
Taylor v. Tompkins, 2 Heisk. (Tenn.) 89.....	1517, 1523
Taylor v. Walker, 117 Fed. 737.....	1466
Taylor v. Welch, 6 Or. 198.....	971
Taylor v. Wilcox, 67 Mass. 572, 46 N. E. 115.....	1512
Teague v. Martin, 187 Ala. 500, 13 Am. St. Rep. 63, 6 South. 362.....	1228
Teal v. Collins, 9 Or. 89.....	1223
Teal v. Woodworth, 3 Paige, 470.....	1182

Teegarden v. Davis, 36 Ohio St. 601.....	729
Teasdale v. Sanderson, 33 Beav. 534.....	1212
Tefft v. Lewis (R. I.), 60 Atl. 243.....	738
Teft v. Booth, 104 Ga. 590, 30 S. E. 803.....	1075
Telford v. Brinckerhoff, 163 Ill. 439, 45 N. E. 156.....	1125
Telford v. Chicago, P. & M. R. Co., 172 Ill. 559, 50 N. E. 105.....	1359
Temperton v. Russell, [1893] 1 Q. B. D. 715, 730.....	1011, 1012, 1017, 1024
Temple v. Glasgow, 80 Fed. 441, 42 U. S. App. 417, 25 C. C. A. 540.....	294, 295
Temple v. Williams, 91 N. C. 82.....	138
Temple Nat. Bank v. Warner (Tex. Civ. App.), 31 S. W. 239....	1161
Ten Eyck v. Manning, 52 N. J. Eq. 47, 51, 27 Atl. 900.....	1296, 1293, 1329
Tennessee Brewing Co. v. Union Ry. Co. (Tenn.), 85 S. W. 864..	872
Ter Knile v. Reddick (N. J. Eq.), 39 Atl. 1062.....	75, 85
Terre Haute v. Farmers' Loan & T. Co., 99 Fed. 838, 40 C. C. A. 117.....	767, 840
Terre Haute v. Mack, 139 Ind. 99, 38 N. E. 468.....	690
Terre Haute & I. R. Co. v. Cox, 102 Fed. 825, 42 C. C. A. 654....	423
Terre Haute & I. R. Co. v. Peoria & P. U. R. Co., 82 Fed. 943..	1080
Terrell v. Strong, 14 Misc. Rep. 258, 35 N. Y. Supp. 1000.....	620
Terry v. Anderson, 95 U. S. 628, 24 L. ed. 365.....	1457
Terry v. Little, 101 U. S. 216, 25 L. ed. 864.....	1472
Terry v. Robbins, 122 Fed. 725.....	816
Terry v. Rosell, 32 Ark. 378.....	1398
Terry v. Tubman, 92 U. S. 156, 23 L. ed. 537.....	1457
Teske v. Dittbemer (Neb.), 98 N. W. 57.....	1260, 1261
Tessier v. Wyse, 3 Bland Ch. (Md.) 28.....	817
Tetrault v. Fournier (Mass.), 72 N. E. 350.....	50
Tevis v. Ellis, 25 Cal. 518.....	835
Texas & P. R. Co. v. Bloom, 164 U. S. 636, 17 Sup. Ct. 216, 41 L. ed. 580.....	383
Texas & P. R. Co. v. Collins, 84 Tex. 121, 19 S. W. 365.....	412
Texas & P. R. Co. v. Cox, 145 U. S. 593, 12 Sup. Ct. 905, 36 L. ed. 829.....	338, 341
Texas & P. R. Co. v. Interstate Transp. Co., 155 U. S. 585, 15 Sup. Ct. 228, 39 L. ed. 271.....	880
Texas & P. Ry. Co. v. Johnson, 76 Tex. 421, 18 Am. St. Rep. 60, 13 S. W. 463.....	350, 411, 436
Texas & P. R. Co. v. Johnson, 151 U. S. 81, 14 Sup. Ct. 250, 38 L. ed. 81.....	383
Texas & P. R. Co. v. Marshall, 136 U. S. 393, 407, 10 Sup. Ct. 846, 34 L. ed. 385.....	1276, 1279
Texas & P. R. Co. v. Watson, 13 Tex. Civ. App. 555, 36 S. W. 290.....	351
Texas Consol. etc. Assn. v. Storrow, 92 Fed. 5, 34 C. C. A. 182..	227
Texas Trunk R. Co. v. Lewis, 81 Tex. 1, 26 Am. St. Rep. 776, 16 S. W. 647.....	307
Texas Trunk R. Co. v. State, 83 Tex. 1, 18 S. W. 199.....	245
Thackeray v. Parker, 1 N. R. 567.....	1215
Thackrah v. Haas, 119 U. S. 499, 7 Sup. Ct. 311, 30 L. ed. 486....	1165
Thackwray, In re, L. R. 40 Ch. D. 34, 38.....	1323
Thalheimer v. Lockhart (Ark.), 88 S. W. 591.....	1146
Thalmann v. Hoffman House, 58 N. Y. Supp. 227, 27 Misc. Rep. 140.....	215

Thatcher v. Humble, 67 Ind. 441.....	823
Thayer v. Daniels, 110 Mass. 345.....	1480
Thayer v. Humphrey, 91 Wis. 276, 51 Am. St. Rep. 887, 64 N. W. 1007, 30 L. R. A. 549.....	1536, 1537
Thayer v. Knote, 59 Kan. 181, 52 Pac. 433.....	1165
Thayer v. Star Min. Co., 105 Ill. 540, 547.....	1343
Thayer v. Wilmington Star Min. Co., 105 Ill. 540, 547.....	1336
Thayer v. Younge, 86 Ind. 259.....	1313
Theed v. Debenham, L. R. 2 Ch. D. 165.....	952
Thiemann v. Heinze, 120 Mo. 630, 25 S. W. 533.....	1161
Thigpen v. Aldridge, 92 Ga. 563, 17 S. E. 860.....	846
Third Ave. R. R. Co. v. Mayor, 54 N. Y. 159.....	632, 1087
Third Nat. Bank v. Lumber Co., 132 Mass. 410.....	77, 93
Thomas v. Adams, 30 Ill. 37.....	1412
Thomas v. Beals, 154 Mass. 51, 27 N. E. 1004.....	1162, 1165
Thomas v. Cincinnati, N. O. & T. P. Ry. Co., 62 Fed. 17.....	395
Thomas v. Cincinnati, N. O. & T. P. Ry. Co., 62 Fed. 803.....	303, 322, 1030, 1031, 1039, 1041, 1045
Thomas v. Davies, 11 Beav. 29.....	177
Thomas v. Dawkins, 1 Ves. 452.....	276
Thomas v. Dering, 1 Keen, 729.....	1315, 1319
Thomas v. East Tennessee, V. & G. Ry. Co., 60 Fed. 7.....	395
Thomas v. Gain, 35 Mich. 156, 24 Am. Rep. 535.....	706
Thomas v. Garvan, 4 Dev. 223, 25 Am. Dec. 708.....	1197
Thomas v. Grand View Beach R. Co., 76 Hun, 601, 28 N. Y. Supp. 201.....	766
Thomas v. Hawkins, 1 Ves. 452.....	279
Thomas v. Hearn, 2 Port. (Ala.) 262.....	1483
Thomas v. Howell, L. R. 34 Ch. D. 166.....	1374, 1377
Thomas v. Hurst, 73 Fed. 372.....	1532
Thomas v. Ireland, 88 Ky. 581, 21 Am. St. Rep. 356, 11 S. W. 653.....	1114
Thomas v. James, 32 Ala. 723.....	835
Thomas v. Musical Mut. Pro. Union, 121 N. Y. 45, 24 N. E. 24, 8 L. R. A. 175, reversing 49 Hun, 171, 2 N. Y. Supp. 195.....	555, 557
Thomas v. Nantahala Marble etc. Co., 58 Fed. 485, 7 C. C. A. 330.....	158, 846
Thomas v. Oakley, 18 Ves. 184.....	820, 823
Thomas v. Robinson (Iowa), 92 N. W. 70.....	833
Thomas v. Rowe (Va.), 22 S. E. 157.....	577, 744
Thomas v. Thomas, 73 Iowa, 657, 35 N. W. 693.....	1168
Thomas v. Van Meter, 164 Ill. 304, 45 N. E. 405.....	45
Thomas v. Western Car Co., 149 U. S. 95, 13 Sup. Ct. 824, 37 L. ed. 663.....	411, 423
Thomas v. Williams, 14 Ch. D. 864.....	798, 1058
Thompson, In re, 10 App. Div. 40, 41 N. Y. Supp. 740.....	312
Thompson v. Brown, 4 Johns. Ch. 620.....	1412
Thompson v. Brownlie, 25 Ky. Law Rep. 622, 76 S. W. 172.....	400
Thompson v. Canal Fund Commrs., 2 Abb. Pr. 248.....	580
Thompson v. Cochran, 7 Humph. 72, 46 Am. Dec. 68.....	1170
Thompson v. Diffenderfer, 1 Md. Ch. 489.....	117, 262
Thompson v. Dekum, 32 Or. 506, 52 Pac. 517, 755.....	1476, 1477
Thompson v. Dumas, 85 Fed. 517, 29 C. C. A. 312.....	59
Thompson v. Ebbets, Hopk. Ch. (N. Y.) 272.....	75
Thompson v. Etowah Iron Co., 91 Ga. 538, 17 S. E. 663.....	1238
Thompson v. Frist, 15 Md. 24.....	1536

Thompson v. Gould, 20 Pick. 134.....	1390
Thompson v. Greeley, 107 Mo. 577.	204, 207, 360, 374
Thompson v. Hardman, 6 Johns. Ch. 436.....	1216
Thompson v. Hibbs (Or.), 76 Pac. 778	1481
Thompson v. Hill, 3 Yerg. 167.....	1088
Thompson v. Holladay, 15 Or. 34, 14 Pac. 725.....	406
Thompson v. Jackson, 3 Rand. (Va.) 504, 15 Am. Dec. 721.....	1157
Thompson v. La Rue, 59 Neb. 614, 81 N. W. 612.....	1432
Thompson v. Lexington, 104 Ky. 165, 46 S. W. 481.....	700
Thompson v. Lynch, 29 Cal. 189	1226, 1234
Thompson v. Maloney, 199 Ill. 276, 93 Am. St. Rep. 183, 65 N. E. 237	931
Thompson v. McCleary, 159 Pa. St. 189, 28 Atl. 254.....	309, 314
Thompson v. Meek, 3 Sneed, 271	1075
Thompson v. Natchez Water etc. Co., 68 Miss. 423, 9 South. 821..	231
Thompson v. New South Coal Co., 135 Ala. 630, 93 Am. St. Rep. 49, 34 South. 31	1354
Thompson v. Orser, 105 Ga. 482, 30 S. E. 626.....	165
Thompson v. Reno Sav. Bank, 19 Nev. 103, 3 Am. St. Rep. 797, 7 Pac. 68	1459, 1470, 1472
Thompson v. Scott, 4 Dill. 508, Fed. Cas. No. 13,975..	329, 330, 331, 333
Thompson v. Sherrard, 35 Barb. 593, 22 How. Pr. 155.....	154
Thompson v. Shirley, 69 Fed. 484	176
Thompson v. Stanhope, Amb. 737	989
Thompson v. Thompson, 107 Ala. 163, 18 South. 247.....	1199
Thompson v. Thompson, 132 Ind. 288, 31 N. E. 529.....	1162
Thompson v. Thompson, 1 Jones (N. C.), 430	1381
Thompson v. Tower Mfg. Co., 87 Ala. 733, 6 South. 928....	111, 261, 265, 272
Thompson v. Winter, 42 Minn. 121, 123, 43 N. W. 796, 6 L. R. A. 246	1315
Thomson v. Crane, 73 Fed. 327	1442
Thomson v. Smith, 63 N. Y. 301	1394
Thorley's Cattle-food Co. v. Massam, 14 Ch. D. 763.....	798, 1058
Thorn v. Pittard, 62 Fed. 232, 10 C. C. A. 352.....	348
Thorn v. Sweeney, 12 Nev. 251	822, 837
Thorndike v. Thorndike, 142 Ill. 450, 32 N. E. 510, 21 L. R. A. 71	1127
Thornton v. Highland Ave. & B. R. Co., 94 Ala. 353, 10 South. 442	390
Thornton v. Knight, 16 Sim. 509.....	1154
Thornton v. Martin, 116 Ga. 115, 42 S. E. 348.....	1396, 1397
Thornton v. Thornton, 31 Gratt. (Va.) 212	1520, 1521
Thornton v. Washington Savings Bank, 76 Va. 432.....	299, 301
Thornton-Thomas M. Co. v. Second J. D. Ct., 20 Mont. 284, 50 Pac. 852	262
Thorn Wire Hedge Co. v. Washburn & Moen Mfg. Co., 159 U. S. 423, 16 Sup. Ct. 94, 40 L. ed. 205.....	62
Thorp v. Leibrecht, 56 N. J. Eq. 499, 39 Atl. 361.....	1427
Thorpe v. Brumfit, L. R. 8 Ch. 650.....	939
Thruston v. Minke, 32 Md. 487	939
Thruston v. Minke, 32 Md. 571.....	1194, 1205, 1207, 1216
Thum v. Pingree, 21 Utah, 348, 61 Pac. 18.....	446
Thurber v. Blanck, 50 N. Y. 80	1431
Thurber v. Meves, 119 Cal. 35, 50 Pac. 1063, 51 Pac. 536..	1294, 1295
Tibbals v. Sargeant, 14 N. J. Eq. 449	116

Tibbets v. Cohn, 116 Cal. 365, 48 Pac. 372.....	355, 356, 360
Tichenor v. Knapp, 6 Or. 205	1245
Tidball's Exrs. v. Shenandoah Nat. Bank (W. Va.), 42 S. E. 867	41
Tice v. Annin, 2 Johns. Ch. 125	1086
Tice v. School District, 5 McCrary, 362, 17 Fed. 283, 285.....	39
Tidd v. Lister, 10 Hare, 140, 157, 3 De Gex, M. & G. 857.....	1399
Tiede v. Schneidt, 99 Wis. 201, 74 N. W. 798.....	792, 895
Tiernan v. Miller (Neb.), 96 N. W. 661.....	836
Tiernan v. Rescaniere's Admr., 10 Gill & J. 217.....	83
Tiernan v. Roland, 3 Harr. (15 Pa. St.) 429.....	1330
Tift v. Southern Ry. Co., 123 Fed. 789.....	1062
Tilden v. Mayor etc., 56 Barb. 340.....	1228, 1235
Tilford v. Burnham, 7 Dana, 110	1452
Tilley v. Thomas, L. R. 3 Ch. App. 61	1335, 1338
Tillis v. Smith, 108 Ala. 264, 19 South. 374.....	1143
Tillman, Ex parte, 93 Ala. 101, 9 South. 527.....	302, 307, 308
Tillmes v. Marsh, 67 Pa. St. 507.....	1173
Tillson v. Manhattan R. Co., 24 App. Div. 623, 48 N. Y. Supp. 224	779
Tilton v. Goodwin, 183 Mass. 236, 66 N. E. 802.....	1428
Tilton v. Oregon C. M. R. Co., 3 Saw. 22, Fed. Cas. No. 14,055	656, 660
Times Publishing Co. v. Everett, 9 Wash. 518, 43 Am. St. Rep. 865, 37 Pac. 695	611, 613, 626, 627
Timmerman v. Dever, 52 Mich. 34, 50 Am. Rep. 240, 17 N. W. 230	524
Tink v. Walker, 148 Ill. 234, 35 N. E. 765.....	1381
Tinney v. Stebbins, 28 Barb. 290	1183, 1185
Tinsley, Ex parte, 37 Tex. Cr. App. 517, 66 Am. St. Rep. 818, 40 S. W. 306; affirmed 171 U. S. 101, 18 Sup. Ct. 805... 300, 303	
Tinsley v. Anderson, 171 U. S. 101, 18 Sup. Ct. 805, 43 L. ed. 91... 303	
Tinsley v. Oliver's Admr., 5 Munf. (Va.) 419.....	1503
Tipping v. Clarke, 2 Hare, 393	490
Tipping v. Eckersley, 2 Kay & J. 264	808
Tison v. Smith, 8 Tex. 147	1295, 1329
Title Trust Co. v. Aylesworth, 40 Or. 20, 66 Pac. 276.....	1227
Titsworth v. Stout, 49 Ill. 78, 95 Am. Dec. 577.....	1213
Tittman v. Thornton, 107 Mo. 500, 17 S. W. 979, 16 L. R. A. 410	1433
Tobey v. Foreman, 79 Ill. 489	1332
Tobey v. Moore, 130 Mass. 448	504
Tobin v. Gillespie, 152 Mass. 219, 25 N. E. 88.....	1226
Tobin v. Portland Flouring Mills, 41 Or. 269, 68 Pac. 749, 1108.. 401	
Todd v. Rafferty's Admr., 30 N. J. Eq. 254.....	1533
Todd v. Rich, 2 Tenn. Ch. 107	144, 280
Todd v. Rustad, 43 Minn. 500, 46 N. W. 73	628
Todd v. Staats, 60 N. J. Eq. 507, 46 Atl. 645.....	957
Toland v. Toland, 123 Cal. 140, 57 Pac. 681.....	1252
Toledo, A. A. & N. M. R. Co. v. Penn. Co., 54 Fed. 730, 19 L. R. A. 387.....	798, 1041, 1042, 1043
Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co., 54 Fed. 746, 19 L. R. A. 395	1023, 1029, 1041, 1043, 1045
Toledo & W. R. Co. v. City of Lafayette, 22 Ind. 262.....	686
Toledo W. & W. Co. v. Beggs, 85 Ill. 80, 28 Am. Rep. 613....	381
Toller v. Carteret, 2 Vern. 494.....	29, 30

Tolleson v. Green, 83 Ga. 499, 10 S. E. 120.....	299, 303, 304
Tolleson v. People's Savings Bank, 85 Ga. 171, 11 S. E. 599.....	300, 303
Tolleston Club of Chicago v. Clough, 146 Ind. 93, 43 N. E. 647.....	1251
Tolman v. Jones, 114 Ill. 148, 28 N. E. 464.....	300, 303, 304
Tome v. King, 64 Md. 166, 21 Atl. 279.....	427
Tomkins v. Miller (N. J. Eq.), 27 Atl. 484.....	1192
Tomkins v. Tomkins, 11 N. J. Eq. 512.....	1101, 1119
Tomlinson v. Rubio, 16 Cal. 202.....	835
Tomlinson etc. Co. v. Shatto, 34 Fed. 380.....	450
Tompkins v. Blakey, 70 N. H. 584, 49 Atl. 111.....	438, 439, 442
Tompkins v. Drennen, 56 Fed. 694, 13 U. S. App. 308, 6 C. C. A. 83.....	1075, 1077
Tompkins v. Fonda, 4 Paige, 448.....	1171, 1417
Tompkins v. Halleck, 133 Mass. 32, 43 Am. Rep. 480.....	988
Tompkins Co. v. Catawba Mills, 82 Fed. 780.....	225, 1426
Tootle v. Ellis, 63 Kan. 422, 88 Am. St. Rep. 246, 65 Pac. 675.....	1119
Topeka v. Gage, 44 Kan. 87, 24 Pac. 82.....	697
Topp v. Williams, 7 Humph. 569.....	1173
Torgrinson v. Norwich School Dist. No. 31 (N. D.), 103 N. W. 414.....	726
Tornanses v. Melsing, 106 Fed. 775, 784, 45 C. C. A. 615.....	158
Torren Fire Engine Co. v. Mobile, 101 Ala. 559, 14 South. 557.....	1231
Torrey v. Cook, 116 Mass. 163.....	1205
Totten v. Stuyvesant, 3 Edw. Ch. 503.....	1192
Totten & Hogg I. & S. F. Co. v. Muncie Nail Co., 148 Ind. 372, 47 N. E. 703.....	291
Toulmin v. Reid, 14 Beav. 499.....	81
Touzalín v. Omaha, 25 Neb. 817, 41 N. Y. 796.....	715
Towle v. American Bldg. etc. Soc., 60 Fed. 131.....	213, 216
Town v. Needham, 3 Paige, 545, 24 Am. Dec. 246.....	1211
Town Council, Appeal of, 15 Atl. (Pa.) 730.....	592
Towne v. Campbell, 35 Minn. 231, 28 N. W. 254.....	450
Towner v. Ticknor, 112 Ill. 217, 224.....	1364
Townes v. Nichols, 73 Me. 515.....	1395
Townsend v. Bell, 62 Hun. 306, 17 N. Y. Supp. 210.....	906, 965, 966
Townsend v. Bell, 42 App. Div. 409, 59 N. Y. Supp. 203.....	966
Townsend v. Epstein, 93 Md. 537, 86 Am. St. Rep. 441, 49 Atl. 629, 52 L. R. A. 409.....	922, 938, 941, 945
Townsend v. Fenton, 32 Minn. 482, 21 N. W. 726.....	1355, 1356
Townsend v. Mayor etc., 77 N. Y. 542.....	1228, 1235
Townsend v. Oneonta, C. & B. S. Ry. Co., 83 N. Y. Supp. 1034, 86 App. Div. 604, 13 N. Y. Ann. Cas. 402.....	434
Townsend v. Vanderwerker, 160 U. S. 171, 16 Sup. Ct. 253, 40 L. ed. 383.....	53, 1347, 1354, 1368
Townsend v. Whitney, 75 N. Y. 425, 15 Hun. 93.....	1494, 1495
Townshend v. Townshend, 1 Abb. N. C. (N. Y.) 81.....	1213
Toyalack Township v. Monoursville etc. Ry. Co., 7 Pa. Dist. Rep. 291.....	919
Tracy v. Le Blanc, 89 Me. 304, 36 Atl. 399.....	883, 884
Tracy v. Newton, 57 Iowa, 210, 10 N. W. 636.....	1231
Trade Auxiliary Co. v. Vickers, L. R. 16 Eq. 303.....	222, 224, 225
Tradesman Pub. Co. v. Knoxville C. W. Co., 95 Tenn. 634, 49 Am. St. Rep. 943, 32 S. W. 1097, 71 L. R. A. 593.....	392
Traill v. Baring, 4 De Gex, J. & S. 318.....	1090, 1152
Traitel Marble Co. v. Chase, 35 Misc. Rep. 233, 71 N. Y. Supp. 628.....	516

Transportation Co. v. Standard Oil Co. (1902), 50 S. W. 611, 88 Am. St. Rep. 895, 40 S. E. 591, 56 L. R. A. 804....	1048, 1049
Traphaagen v. Kirk (Mont.), 77 Pac. 58.....	1313
Trapnall v. Hill, 31 Ark. 345.....	1518
Travelers' Ins. Co. v. Brouse, 83 Ind. 62	180
Travelers' Ins. Co. v. Healey, 86 Hun, 524, 33 N. Y. Supp. 911..	72
Travelers' Pro. Assn. v. Gilbert, 111 Fed. 269, 49 C. C. A. 309, 55 L. R. A. 538	1124
Travis County v. Trogdon (Tex. Civ. App.), 29 S. W. 46....	764, 767
Treacy v. Ellis, 45 App. Div. 492, 61 N. Y. Supp. 600.....	1205
Treadwell v. Torbert, 122 Ala. 297, 25 South. 216.....	1161, 1232
Treadwell v. United Verde Copper Co., 62 N. Y. Supp. 708, 47 App. Div. 613	548
Treanor v. Sheldon Bank, 90 Iowa, 575, 58 N. W. 914.....	571
Treat v. Wilson, 4 Kan. App. 586, 46 Pac. 322.....	1128
Tredegar, Lord, v. Windus, L. R. 19 Eq. 607.....	1086
Trego v. Hunt, [1896] App. Cas. 7	526
Trentman v. Eldridge, 98 Ind. 525	1402
Trenton Banking Co. v. Woodruff, 3 N. J. Eq. 210.....	182
Trenton Schools v. Heath, 15 N. J. Eq. 22	75
Trible v. Nichols, 53 Ark. 271, 22 Am. St. Rep. 190, 13 S. W. 796	1505
Triebert v. Burgess, 11 Md. 452	262
Trieste v. Enslen, 106 Ala. 180, 17 South. 356.....	1135
Trigg v. Hitz, 17 Abb. Pr. 436.....	67, 91
Trigg v. Read, 5 Humph. (Tenn.) 529, 541, 542.....	1307
Trimble v. Minnesota Threshing Co., 10 Okla. 578, 64 Pac. 8....	1155
Trinidad Asphalt Co. v. Abard, 68 L. J. P. C. 114, [1899] App. Cas. 594, 81 L. J., N. S., 132, 48 Week. Rep. 116.....	869, 971
Tripp v. Boardman, 49 Iowa, 410.....	393
Tripp v. Riley, 15 Barb. 333	1183, 1186
Tritton v. Foote, 2 Brown Ch. 636	1258
Troe v. Larson, 84 Iowa, 649, 35 Am. St. Rep. 336, 51 N. W. 179.	913
Trollope v. London Trade Fed., 11 The Times L. R. 228.....	1034
Tron v. Lewis, 31 Ind. App. 178, 66 N. E. 490.....	870, 931
Trotter v. Trotter, 31 Ark. 145.....	1192
Troughber v. Akin, 109 Tenn. 451, 73 S. W. 118.....	156
Trout v. Lucas, 54 N. J. Eq. 361, 35 Atl. 153.....	509, 510
Troutman v. Gowing, 16 Iowa, 415	1370
Troutman v. McCleskey, 7 Tex. Civ. App. 561, 27 S. W. 173....	742
Trowbridge v. Caulkins, 17 R. I. 580, 23 Atl. 1102.....	1197
Trowbridge v. Horan, 78 N. Y. 439	722
Trowbridge v. Stone's Admr., 42 W. Va. 454, 26 S. E. 363.....	57
Trowbridge v. True, 52 Conn. 190, 52 Am. Rep. 579.....	872, 894
Troy & B. R. Co. v. Boston, H. T. & W. Ry. Co., 86 N. Y. 107	766, 779
Troy Iron & Nail Factory v. Winslow, 11 Blatchf. 513, Fed. Cas. No. 14,199.....	1537
Troy Fertilizer Co. v. Prestwood, 116 Ala. 119, 22 South. 262..	1131
Troy Sav. Bank v. Morrison, 27 App. Div. 423, 50 N. Y. Supp. 225	354
True v. Mendenhall, 67 Kan. 497, 73 Pac. 67.....	1119
Truesdale v. Peoria Grape Sugar Co., 101 Ill. 561.....	774
Truitt v. Darnell, 65 N. J. Eq. 221, 55 Atl. 692.....	1099
Truly v. Wanzer, 46 U. S. (5 How.) 141, 12 L. ed. 88.....	1075
Truman v. Redgrave, L. R. 18 Ch. D. 547.....	166

Trumbull v. McKuser, 9 Colo. App. 350, 48 Pac. 825.....	338
Truss v. Miller, 116 Ala. 494, 22 South. 863.....	1490
Trust & Deposit Co. v. Spartanburg Waterworks Co., 91 Fed. 324	230
Trust Co. of Ga. v. State, 109 Ga. 736, 35 S. E. 323, 48 L. R. A. 520	539
Trustees v. Gleason, 39 Fla. 771, 23 South. 539.....	1244
Trustees v. Greenough, 105 U. S. 527, 537, 26 L. ed. 1157.....	426
Trustees of Amherst College v. Allen, 165 Mass. 178, 42 N. E. 570	1101
Trustees of Burroughs School Dist. v. Board of Control, 62 S. C. 68, 39 S. E. 793	574
Trustees of Cincinnati Southern Ry. v. Guenther, 19 Fed. 395...	658
Trustees of Columbia College v. Lynch, 70 N. Y. 440, 26 Am. Rep. 615.....	509
Trustees of Columbia College v. Thacher, 87 N. Y. 311.....	508
Trustees of German Evangelical Cong. v. Hoessli, 13 Wis. 388..	561
Trustees of Hazelgreen v. McNabb, 23 Ky. Law Rep. 811, 64 S. W. 431	606
Trustees of Internal Imp. F. of Florida v. Gleason, 39 Fla. 71, 23 South. 539.....	850
Trustees of Village of Delhi v. Youmans, 50 Barb. 316, 45 N. Y. 362, 6 Am. Rep. 100.....	971
Trustees of Village of Watertown v. Cowen, 4 Paige, 510, 27 Am. Dec. 80.....	507
Truth Lodge No. 213 etc. v. Barton, 119 Iowa, 230, 97 Am. St. Rep. 303, 93 N. W. 106	1185
Tuchman v. Welch, 42 Fed. 548, 559.....	481
Tucker v. Howard, 128 Mass. 361	854, 855, 940, 950, 952, 960
Tucker v. Kenniston, 47 N. H. 267, 93 Am. Dec. 405.....	1130
Tucker v. Sellers, 130 Ind. 514, 30 N. E. 531.....	690
Tucker v. Tucker, 19 Wend. 226.....	1214
Tucker v. Whittlesey, 74 Wis. 74, 41 N. W. 535, 42 N. W. 101...	1101
Tucker v. Williams (Tex. Civ. App.), 56 S. W. 585.....	1118
Tuckerfield v. Buller, 1 Dick. 241	1213
Tuffree v. Polhemus, 108 Cal. 670, 41 Pac. 806.....	1247, 1248
Tuft v. Pickering, 28 W. Va. 330.....	1426
Tufts v. Little, 56 Ga. 139	197
Tugwell v. Eagle Pass Ferry Co., 74 Tex. 480, 9 S. W. 120, 13 S. W. 654	1003
Tukey v. Omaha, 54 Neb. 370, 69 Am. St. Rep. 711, 74 N. W. 613	610, 616
Tulk v. Moxhay, 2 Phill. 774	500, 502
Tunison v. Bradford, 49 N. J. Eq. 210, 22 Atl. 1073.....	1360
Tuolumne Water Co. v. Chapman, 8 Cal. 392	880, 968
Tupper v. Dart, 104 Ga. 179, 30 S. E. 624.....	579
Turnbull v. Prentiss Lumber Co., 55 Mich. 387, 21 N. W. 375	188, 229, 240
Turnbull v. Prentiss Lumber Co. (Mich., 1884), 8 Am. & Eng. Corp. Cas. 257	1469
Turner v. Bailey, 12 Wash. 634, 42 Pac. 115	1466
Turner v. Colson, 21 Ky. Law Rep. 1390, 55 S. W. 551.....	1098
Turner v. Cross, 83 Tex. 218, 18 S. W. 578.....	412
Turner v. Evans, 2 De Gex, M. & G. 740.....	524
Turner v. Green, [1895] 2 Ch. 205.....	1307
Turner v. Hart, 71 Mich. 128, 15 Am. St. Rep. 243, 38 N. W. 890	907

Turner v. Kendal, 13 Mees. & W. 171.....	99
Turner v. Mirfield, 34 Beav. 390	917
Turner v. Morgan, 8 Ves. 143.....	1188, 1190, 1210
Turner v. Peoria & S. R. Co., 95 Ill. 134, 35 Am. Rep. 144.....	404
Turner v. Pewee Valley, 100 Ky. 288, 38 S. W. 143, 688.....	698
Turner v. Stewart, 78 Mo. 480	849
Turner v. Teague, 73 Ala. 554.....	1502
Turner v. Wright, 2 De Gex, F. & J. 234.....	812, 818
Turnipseed v. Kentucky Wagon Co., 97 Ga. 258, 23 S. E. 84.....	199, 200
Turnlin v. Vanhorn, 77 Ga. 315, 3 S. E. 264.....	197
Turpin v. Kelly, 85 N. C. 399.....	1210
Tutt v. Thornton, 57 Tex. 35	1503
Tuttle v. Blow, 176 Mo. 158, 98 Am. St. Rep. 488, 75 S. W. 617.....	258, 262
Tuttle v. Church, 53 Fed. 422	907
Tuttle v. Moore, 16 Minn. 123.....	1271
Twell v. Twell, 6 Mont. 19, 9 Pac. 537.....	1427
Twigg v. Fifield, 13 Ves. 513, 518.....	1391
Twining v. Morrice, 2 Bro. C. C. 326.....	1314
Twining v. Neil, 38 N. J. Eq. 470.....	1303
Twin Village Water Co. v. Damariscotta Water Co., 98 Me. 325, 56 Atl. 1112	1004
Twitty v. Logan, 80 N. C. 69.....	154
Twort v. Twort, 16 Ves. 128.....	817, 1209
Tygart's Val. Bank v. Town of Philippi, 38 W. Va. 219, 18 S. E. 489	747, 748
Tyler, In re, 149 U. S. 164, 13 Sup. Ct. 785, 37 L. ed. 689..	305, 307, 320, 321, 322, 654, 663
Tyler v. Hamilton, 62 Fed. 187.....	366
Tynan v. Cadenas, 7 Civ. Proc. Rep. (N. Y.) 305.....	91
Tynan v. Warren, 53 N. J. Eq. 313, 31 Atl. 596.....	41
Tyner v. Fenner, 4 Lea, 469.....	1523
Tyner v. People's Gas Co., 131 Ind. 408, 31 N. E. 61.....	870
Tyrrell v. Painton, [1895] 1 Q. B. 202.....	120
Tysen v. Wabash Ry. Co., 8 Biss. 247, Fed. Cas. No. 14,315....	251
Tyson v. Applegate, 40 N. J. Eq. 305.....	384
Tyson v. Brown, 64 Ala. 244	1226, 1233
Tyson v. Fairclough, 2 Sim. & St. 142	151
Tyus v. Rust, 37 Ga. 574, 95 Am. Dec. 365.....	84, 86, 88, 90, 96

U

Ueland v. Hangan, 70 Minn. 349, 73 N. W. 169.....	356
Uhl v. Dillon, 10 Md. 500, 69 Am. Dec. 172.....	198, 199
Uhl v. Irwin, 3 Okla. 388, 41 Pac. 376.....	494
Uhl v. May, 5 Neb. 157.....	1227
Uhlman v. New York Life Ins. Co., 109 N. Y. 421, 433, 4 Am. St. Rep. 482, 17 N. E. 363.....	1518, 1519
Ulbricht v. Eufaula Water Co., 86 Ala. 587, 11 Am. St. Rep. 72, 6 South. 78, 4 L. R. A. 572....	915
Uline v. New York etc. R. R. Co., 101 N. Y. 98, 54 Am. Rep. 661, 4 N. E. 536.....	778
Ullrich v. Ullrich (Wis.), 101 N. W. 376.....	1197
Ulman v. Clark, 75 Fed. 868.....	61, 159
Umatilla Irr. Co. v. Umatilla Imp. Co., 22 Or. 366, 30 Pac. 30....	1246
Underhill v. Murphy, 25 Ky. Law Rep. 1731, 78 S. W. 482.....	1010, 1012, 1042
Underwood v. Boston etc. Bank, 141 Mass. 305, 4 N. E. 822....	71
Underwood v. Hitchcox, 1 Ves. Sr. 279.....	1313

Underwood v. McVeigh, 23 Gratt. 418.....	262, 268
Underwood v. Sutcliffe, 77 N. Y. 58.....	376
Ungley v. Ungley, L. R. 5 Ch. D. 887.....	1361
Union & Planters' Bank v. Memphis, 111 Fed. 561, 49 C. C. A. 455.....	646, 656
Union Bank v. Geary, 5 Pet. 99, 8 L. ed. 60.....	1094
Union Bank of Georgetown v. Laird, 15 U. S. (2 Wheat.) 390, 4 L. ed. 269.....	1399
Union Boom Co. v. Samish River Boom Co., 33 Wash. 144, 74 Pac. 53.....	154
Union Cent. Life Ins. Co. v. Phillips, 102 Fed. 19, 41 C. C. A. 263.....	1270
Union Coal Mining Co. v. McAdam, 38 Iowa, 663, 664.....	1309
Union Light etc. Co. v. Lichty, 42 Or. 563, 71 Pac. 1044.....	970
Union Mill & M. Co. v. Dangberg, 81 Fed. 73.....	894, 968
Union Mill etc. Co. v. Warren, 82 Fed. 522.....	837, 838
Union Mut. L. Ins. Co. v. Union Mills Plaster Co., 37 Fed. 286, 3 L. R. A. 90.....	170, 172
Union Nat. Bank v. Kansas City Bank, 136 U. S. 223, 10 Sup. Ct. 1013, 34 L. ed. 341.....	106
Union Nat. Bank v. Lane, 177 Ill. 171, 69 Am. St. Rep. 216, 52 N. E. 361.....	1449, 1452
Union Pac. R. Co. v. Alexander, 113 Fed. 347.....	583, 654
Union Pac. R. Co. v. Cheyenne, 113 U. S. 516, 5 Sup. Ct. 601, 28 L. ed. 1098.....	646, 655, 660, 1225
Union Pac. R. Co. v. Cheyenne County, 64 Neb. 777, 90 N. W. 917..	715
Union Pac. R. Co. v. Chicago R. I. & P. Ry Co., 163 U. S. 564, 16 Sup. Ct. 1173, 41 L. ed. 265.....	1281
Union Pac. R. Co. v. Chicago, R. I. & P. R. Co., 51 Fed. 309, 2 C. C. A. 174, 10 U. S. App. 98.....	1281
Union Pac. R. Co. v. Lincoln Co., 2 Dill. 279, Fed. Cas. No. 14,379.....	657
Union Pac. R. v. McAlpine, 129 U. S. 309, 9 Sup. Ct. 286, 32 L. ed. 673.....	1356
Union Pac. R. Co. v. McShane, 3 Dill. 303, Fed. Cas. No. 14,382, affirmed, 22 Wall. 444, 22 L. ed. 747.....	646
Union Pac. R. Co. v. Ruef, 120 Fed. 102.....	1014, 1026, 1027, 1037, 1039, 1043
Union St. R. Co. v. Saginaw, 115 Mich. 300, 73 N. W. 243.....	254
Union Switch & Signal Co. v. Philadelphia & R. R. Co., 75 Fed. 1004.....	984
Union Terminal R. Co. v. Board of R. R. Commrs., 52 Kan. 680, 35 Pac. 224.....	578
Union Terminal R. Co. v. Board of R. R. Commrs., 54 Kan. 352, 38 Pac. 290.....	575
Union Transp. Co. v. Bassett, 118 Cal. 604, 50 Pac. 754.....	585
Union Trust Co. v. Chicago & Lake H. R. Co., 7 Fed. 513.....	404
Union Trust Co. v. Illinois Midland R. Co., 117 U. S. 434, 6 Sup. Ct. 809, 29 L. ed. 963..	249, 397, 398, 402, 404, 405, 411, 414, 415
Union Trust Co. v. Olmsted, 102 N. Y. 729, 7 N. E. 822.....	30
Union Trust Co. v. St. Louis, I. M. & S. R. Co., 4 Dill. 114, Fed. Cas. No. 14,402.....	250, 254
Union Trust Co. v. Souther, 107 U. S. 591, 2 Sup. Ct. 295, 27 L. ed. 488.....	413, 419
Union Trust Co. v. Stanford Trust Co., 72 Conn. 86, 43 Atl. 555..	99
Union Trust Co. v. Stearns, 119 Fed. 790.....	582
Union Trust Co. v. Weber, 96 Ill. 346.....	291, 676, 677, 684
United Lines Tel. Co. v. Grant, 63 Hun, 634, 18 N. Y. Supp. 534..	721

United Lines Tel. Co. v. Grant, 137 N. Y. 7, 32 N. E. 1005.....	721
United Securities Co. v. Louisiana Electric L. Co., 68 Fed. 673..	214
United Security Life Ins. & Tr. Co. v. Ott (N. J. Ch.), 26 Atl. 923	
.....	1099
United States v. Addyston Pipe & Steel Co., 85 Fed. 271, 29 C.	
C. A. 141, 46 L. R. A. 122, reversing 78 Fed. 712.....	1052
United States v. Agler, 62 Fed. 824.....	1045, 1046
United States v. Beebe, 127 U. S. 338, 8 Sup. Ct. 1083, 32 L. ed.	
121.....	51
United States v. Beebe, 180 U. S. 343, 21 Sup. Ct. 371, 45 L. ed.	
563.....	1103
United States v. Brighton Rancho Co., 26 Fed. 218.....	859
United States v. Chicago etc. R. Co., 54 C. C. A. 545, 116 Fed. 969	51
United States v. Church of L. D. S., 5 Utah, 361, 15 Pac. 473....	219
United States v. Coal Dealers' Assn., 85 Fed. 252.....	1052
United States v. Dastervignes, 118 Fed. 199.....	51
United States v. Debs, 64 Fed. 724, 753.....	896, 930
United States v. Debs, 158 U. S. 564, 581, 582, 586, 599, 15 Sup.	
Ct. 900, 39 L. ed. 1092.....	1046 1047
United States v. Eisenbeis, 88 Fed. 4.....	1423
United States v. Elliott, 62 Fed. 801.....	798, 1042
United States v. Elliott, 64 Fed. 27, 30.....	1045, 1046
United States v. Guylard, 79 Fed. 21.....	826
United States v. Harris, 78 Fed. 290.....	412
United States v. Hopkins, 82 Fed. 529.....	1052, 1053
United States v. Howland, 4 Wheat. (17 U. S.) 108, 4 L. ed.	
526.....	1442
United States v. Ingate, 48 Fed. 251.....	1426
United States v. Jellico Mt. Coke & Coal Co., 46 Fed. 432, 12 L.	
R. A. 753.....	1053
United States v. Joint Traffic Assn., 171 U. S. 505, 19 Sup. Ct.	
25, 43 L. ed. 259.....	1053
United States v. Jose; 63 Fed. 951.....	303
United States v. Kane, 23 Fed. 748.....	303, 322, 1031, 1039, 1056
United States v. Late Corporation of Church etc., 5 Utah, 538,	
18 Pac. 35.....	299, 301
United States v. Late Corporation of Church etc., 6 Utah, 9, 21	
Pac. 516.....	397
United States v. Lawrence, 53 Fed. 632..	891
United States v. Masich, 44 Fed. 10.....	190
United States v. Maxwell Land Grant Co., 5 N. Mex. 304, 21 Pac.	
153.....	30
United States v. Michigan, 190 U. S. 379, 23 Sup. Ct. 742, 47 L.	
ed. 1103.....	51
United States v. Michigan Cent. R. Co., 122 Fed. 544.....	1062
United States v. Murphy, 44 Fed. 39.....	303, 323
United States v. North Bloomfield etc. Co., 53 Fed. 625.....	891, 930
United States v. Northern Securities Co., 120 Fed. 721....	1053, 1054
United States v. Parkhurst-Davis Merc. Co., 176 U. S. 317, 20	
Sup. Ct. 423, 44 L. ed. 485.....	1079
United States v. Preston, 4 Wash. C. C. 446, Fed. Cas. No. 16,087	
.....	1512
United States v. Rickert, 188 U. S. 432, 23 Sup. Ct. 478, 47 L. ed.	
532.....	644, 658
United States v. Ryder, 110 U. S. 729, 4 Sup. Ct. 196, 28 L. ed.	
308.....	1512

United States v. Supervisors of Johnson Co., 7 Wall. 196.....	326
United States v. Swift, 122 Fed. 529.....	1053
United States v. Throckmorton, 98 U. S. 61, 25 L. ed. 93.....	1093, 1103, 1105
United States v. Trans-Missouri Freight Assn., 166 U. S. 290, 17 Sup. Ct. 540, 41 L. ed. 1007.....	1052, 1053
United States v. Vietor, 16 Abb. Pr. 153.....	86, 88
United States v. Willamette Val. & C. M. Wagon Road Co., 54 Fed. 807.....	51
United States v. Workingman's Amal. Council, 54 Fed. 994, 26 L. R. A. 158.....	1045
United States Bung Mfg. Co. v. Armstrong, 34 Fed. 94.....	368
United States Car Co., In re, 60 N. J. Eq. 514, 43 Atl. 673.....	408
United States Cordage Co. v. Wm. Wall's Sons Rope Co., 90 Hun, 429, 35 N. Y. Supp. 978.....	524, 527
United States Freehold Land etc. Co. v. Gallegos, 89 Fed. 769, 32 C. C. A. 470.....	831
United States Inv. Co. v. Portland Hospital, 40 Or. 523, 67 Pac. 194, 64 Pac. 644, 56 L. R. A. 627.....	410
United States Life Ins. Co. v. Cable, 98 Fed. 761, 763, 39 C. C. A. 264.....	1154, 1155
United States Life Ins. Co. v. Ettinger, 32 Misc. Rep. 378, 66 N. Y. Supp. 1.....	174
United States Min. Co. v. Lawson, 134 Fed. 769.....	1243
United States Mitis Co. v. Detroit Steel & Spring Co., 122 Fed. 863.....	60
United States Shipbuilding Co. v. Conklin, 126 Fed. 132, 60 C. C. A. 680.....	244
United States Trust Co. v. New York etc. R. Co., 101 N. Y. 478, 5 N. E. 316.....	229, 244, 425
United States Trust Co. v. O'Brien, 61 N. Y. Super. Ct. (29 Jones & S.) 1, 18 N. Y. Supp. 798.....	514, 515
United States Trust Co. v. Omaha & St. L. Ry. Co., 63 Fed. 737, 394	
United States Trust Co. v. Wabash W. Ry. Co., 150 U. S. 299, 14 Sup. Ct. 86, 37 L. ed. 1085.....	392
United States Trust Co. v. Wiley, 41 Barb. 477.....	88
United Traction Co. v. Watervliet, 35 Misc. Rep. 392, 71 N. Y. Supp. 977.....	632, 633, 635
Universal Talking Mach. Co. v. English, 34 Misc. Rep. 342, 69 N. Y. Supp. 813.....	521
University v. Tucker, 31 W. Va. 621, 8 S. E. 410.....	815
University Magazine Co., In re, 82 N. Y. Supp. 74, 83 App. Div. 641.....	410
University of Des Moines v. Polk Co. Trust Co., 87 Iowa, 36, 53 N. W. 1080.....	1334
Updegraf v. Crans, 47 Pa. St. 103.....	591
Updike v. Adams, 22 R. I. 432, 48 Atl. 384.....	1190
Updike v. Adams, 24 R. I. 220, 96 Am. St. Rep. 711, 52 Atl. 991.....	1210
Upman v. Bradley, 17 Me. 427.....	1195, 1209
Upmann v. Elkan, L. R. 7 Ch. App. 130, 12 Eq. 140.....	990
Up River Ice Co. v. Denler, 114 Mich. 296, 68 Am. St. Rep. 480, 72 N. W. 157.....	523, 525
Usborne v. Usborne, Dick. 75.....	816
Utica v. Utica Tel. Co., 24 App. Div. 361, 48 N. Y. Supp. 916....	895

V

Vacuum Oil Co. v. Climax Refining Co., 120 Fed. 254.....	994
Vail v. Hammond, 60 Conn. 374, 25 Am. St. Rep. 330, 22 Atl. 954.....	1414, 1425
Valentine v. Hagerstown, 86 Md. 486, 38 Atl. 931.....	702
Valentine v. Schreiber, 3 App. Div. 235, 38 N. Y. Supp. 417.....	832, 940
Valle v. Zeigler, 84 Mo. 214.....	711
Valley Iron Works Mfg. Co. v. Goodwick, 103 Wis. 436, 78 N. W. 1096.....	529, 1268
Valley Lumber Co. v. Hogan, 85 Wis. 366, 55 N. W. 415.....	1441
Valley Nat. Bank v. H. B. Clafin Co., 108 Iowa, 504, 79 N. W. 279.....	186
Valparaiso v. Gardner, 97 Ind. 1, 49 Am. Rep. 416.....	598, 604, 625
Valparaiso v. Hagen, 153 Ind. 337, 74 Am. St. Rep. 305, 54 N. E. 1062, 48 L. R. A. 707.....	869, 966
Van Allen v. New York El. R. Co., 144 N. Y. 174, 38 N. E. 997.....	778, 780
Van Alstyne v. Cook, 25 N. Y. 489.....	290, 294, 296, 1453
Van Ardsdale v. Drake, 2 Barb. 599.....	1182, 1195
Van Bergen v. Van Bergen, 3 Johns. Ch. 282, 8 Am. Dec. 511.....	883
Van Bianchi v. Wayne, 124 Mich. 462, 83 N. W. 26.....	308
Van Bibber v. Reese, 71 Md. 608, 18 Atl. 892, 6 L. R. A. 332.....	1367
Van Brocklin v. Tennessee, 117 U. S. 169, 6 Sup. Ct. 670, 29 L. ed. 851.....	1231
Van Buskirk v. Roy, 8 How. Pr. 425.....	93
Van Buskirk v. Van Buskirk, 148 Ill. 9, 35 N. E. 383.....	57
Van Campen v. Knight, 63 Barb. 205.....	1331
Vance v. Burbank, 101 U. S. 514, 25 L. ed. 929.....	1103
Vance v. Newman (Ark.), 80 S. W. 574.....	1333, 1340
Van Cleve v. Berkey, 143 Mo. 109, 44 S. W. 743, 42 L. R. A. 593.....	1461, 1467
Van Cott v. Board of Supervisors, 18 Wis. 259.....	750
Van Cott v. Van Brunt, 82 N. Y. 535.....	1462
Vandalia v. St. Louis, V. & T. H. R. Co., 209 Ill. 73, 70 N. E. 662.....	405
Vanegraff v. Medlock, 3 Port. 389, 29 Am. Dec. 256.....	1432
Vandemark v. Schoonmaker, 9 Hun, 11.....	802, 817
Vanderbilt v. Central R. Co., 43 N. J. Eq. 669, 12 Atl. 188.....	393
Vanderbilt v. Little, 43 N. J. Eq. 669, 12 Atl. 188.....	388
Vanderbilt v. Little, 51 N. J. Eq. 289, 26 Atl. 1025.....	393
Vanderhorst Brewing Co. v. Amrhine, 98 Md. 406, 56 Atl. 833..	379
Vanderlip v. City of Grand Rapids, 73 Mich. 522, 16 Am. St. Rep. 597, 41 N. W. 677, 3 L. R. A. 247.....	783
Vandever v. Freeman, 20 Tex. 334, 70 Am. Dec. 391.....	16
Vandiver v. Pollak, 107 Ala. 547, 54 Am. St. Rep. 118, 19 South. 180.....	1484
Van Doren v. Mayor, 9 Paige, 388.....	722, 723, 1235
Van Duyne v. Vreeland, 12 N. J. Eq. 142.....	1358
Van Dyck v. McQuade, 85 N. Y. 617.....	368
Van Dyne v. Vreeland, 11 N. J. Eq. 370.....	1259, 1260
Vane v. Barnard, 2 Vern. 738, Prec. Ch. 454.....	812, 814
Van Houten v. Hooton Cocoa & C. Co., 130 Fed. 600.....	993, 998
Van Houten v. Van Houten (N. J. Eq.), 59 Atl. 555.....	1145
Van Lear v. Eisele, 126 Fed. 823.....	575
Van Loan v. Squires, 23 Abb. N. C. (N. Y.) 230.....	99

Vannatta v. Lindley, 198 Ill. 40, 92 Am. St. Rep. 270, 64 N. E. 735.....	1153, 1155
Van Norden v. Morton, 99 U. S. 378, 25 L. ed. 453.....	1131
Van Orden v. Durham, 35 Cal. 136.....	1494
Van Orman v. Phelps, 9 Barb. 503.....	1215
Van Pelt v. Gardiner, 54 Neb. 701, 75 N. W. 874.....	1459
Van Petten v. Richardson, 68 Mo. 379.....	1483, 1489
Van Praeger v. Everidge, [1902] 2 Ch. App. 266, 271....	1303, 1304
Van Rensselaer v. Kidd, 4 Barb. 17.....	722
Vansickle v. Shenk, 150 Ind. 431, 50 N. E. 381.....	1408
Van Stan's Stratena Co. v. Van Stan, 209 Pa. St. 564, 103 Am. St. Rep. 1018, 58 Atl. 1064....	997
Van Steenburgh v. Porsie Button Co. (N. J.), 34 Atl. 135.....	290
Van Wagoner v. Paterson Gas Light Co., 23 N. J. L. 285....	366, 372
Van Wegenen v. Cooney, 45 N. J. Eq. 24, 16 Atl. 689.....	927, 932
Van Winkle v. Hinckle, 21 Cal. 342.....	1246
Van Winkle v. Owen, 56 N. J. Eq. 253, 34 Atl. 400.....	98, 99
Van Wyck v. Knevals, 106 U. S. 370, 1 Sup. Ct. 336, 27 L. ed. 204.	1231
Van Zandt v. Van Zandt, 7 N. Y. Supp. 706, 17 Civ. Proc. R. 448	74, 90
Varney v. Pope, 60 Me. 192.....	884
Varnum v. Hart, 119 N. Y. 101, 23 N. E. 183.....	317
Varnum v. Leek, 65 Iowa, 751, 23 N. W. 151.....	151, 1209
Varrien v. Berrien, 42 N. J. Eq. 1, 10 Atl. 875.....	95
Vashon v. Barrett, 99 Va. 344, 38 S. E. 200.....	1437
Vasser v. Henderson, 40 Miss. 519, 90 Am. Dec. 351.....	1410, 1412
Vaughan v. Central Pac. R. Co., 4 Saw. 280, Fed. Cas. No. 16,897.	978
Vaughan v. Hewitt, 17 S. C. 442....	1120
Vaughan v. Vincent, 88 N. C. 116.....	151
Vaughn v. Board of Commissioners, 118 N. C. 636, 24 S. E. 425	610, 630
Vaughn v. Johnson, 9 N. J. Eq. 173.....	1075
Vaughn v. School District, 27 Or. 57, 39 Pac. 393.....	734
Vaught v. Meador, 99 Va. 569, 86 Am. St. Rep. 908, 39 S. E. 225.....	31
Vause v. Woods, 46 Miss. 120.....	156, 191
Veatch v. American L. & T. Co., 79 Fed. 471, 25 C. C. A. 39....	424
Veatch v. American L. & T. Co., 84 Fed. 274, 28 C. C. A. 384....	424
Vegelahn v. Guntner, 167 Mass. 92, 57 Am. St. Rep. 443, 44 N. E. 1077, 35 L. R. A. 722....	
.....793, 1022, 1027, 1028, 1032, 1036, 1042	
Veith v. McMurtry, 26 Neb. 341, 42 N. W. 6.....	1384
Veith v. Ress, 60 Neb. 52, 82 N. W. 116.....	145, 269, 397
Venango Nat. Bank v. Taylor, 56 Pa. St. 14.....	369, 370
Vendall v. Harvey, Nelson, 19.....	1082
Venice v. Woodruff, 62 N. Y. 462, 20 Am. Rep. 495.....	1153, 1155
Vennum v. Davis, 35 Ill. 568.....	1076
Verdin v. City of St. Louis, 131 Mo. 26, 33 S. W. 480, 36 S. W. 52	712, 713, 1240
Veret v. Duprez, L. R. 6 Eq. 329.....	140
Vermont & C. R. Co. v. Vermont Central R. Co., 46 Vt. 792....	
.....302, 303, 307	
Vermont Marble Co. v. De Clez Granite Co., 135 Cal. 579, 584, 87 Am. St. Rep. 143, 67 Pac. 1057, 56 L. R. A. 728.....	1462, 1466
Verna v. City of St. Louis, 164 Mo. 146, 64 S. W. 180.....	712

Vernon v. Stephens, 2 P. Wms. 66.....	1341
Vernon v. Vestry etc. Westminster, L. R. 16 Ch. D. 449.....	870
Verplank v. Mercantile Ins. Co. of N. Y., 2 Paige, 438.....	
.....	260, 265, 267, 274
Very v. Levy, 13 How. 345, 14 L. ed. 173.....	1271
Vesta Mills v. City Council of Charleston, 60 S. C. 1, 38 S. E. 266.	738
Viano v. Baccigalupo, 183 Mass. 160, 67 N. E. 641.....	993, 997, 998
Viard, Succession of, 106 La. Ann. 73, 30 South. 246.....	1205
Viburt v. Frost, 3 Abb. Pr. 119.....	361
Vicker v. Durham, 132 N. C. 880, 44 S. E. 685.....	889
Vickers v. Vickers, L. R. Eq. 529.....	1275
Vickery v. Blair, 134 Ind. 554, 32 N. E. 880.....	688
Vieley v. Thompson, 44 Ill. 9.....	676, 677, 680
Vier v. Detroit, 111 Mich. 646, 70 N. W. 139.....	1231, 1247
Vieth v. Ress, 60 Neb. 52, 82 N. W. 116.....	308
Vigo Real Estate Co. v. Reese, 21 Ind. App. 20, 51 N. E. 350....	353
Vila v. Grand Island Electric L. I. & C. S. Co. (Neb.) 94 N. W.	
136.....	209
Vilas v. Jones, 1 N. Y. 274.....	1075
Vilwig v. B. & O. R. R. Co., 79 Va. 449.....	1521
Vineland etc. Dist. v. Azusa etc. Co., 26 Cal. 486, 46 L. R. A. 820,	
58 Pac. 1057.....	971
Viquesney v. Allen, 65 C. C. A. 259, 131 Fed. 21.....	1424
Virgin v. Virgin, 189 Ill. 145, 59 N. E. 586.....	1381
Virginia & A. Coal Co. v. Central R. & B. Co., 170 U. S. 355, 18	
Sup. Ct. 657, 42 L. ed. 1068.....	413, 419
Virginia-Carolina Chem. Co. v. Home Ins. Co., 113 Fed. 1.....	1087
Virginia, T. & C. Co. v. Bristol Land Co., 88 Fed. 134.....	321
Virginia, T. & C. etc. Co. v. Wilder, 88 Va. 942, 14 S. E. 806....	262
Vizard v. Moody, 117 Ga. 67, 43 S. E. 426.....	156
Vodrie v. Tynan (Tex. Civ. App.), 57 S. W. 680.....	1437
Vogler v. Montgomery, 54 Mo. 577.....	1130, 1227
Von Faber v. Faber, 124 Fed. 603.....	993, 997, 998
Von Joel v. Hornsey, [1895] L. R. 2 Ch. D. 774.....	960, 961, 962
Von Roun v. Superior Court, 58 Cal. 358.....	288, 289, 290
Voorhees v. De Meyer, 2 Barb. 37.....	1257
Voorhis v. Baxter, 18 Barb. 592.....	1537
Voorhis v. Childs, 17 N. Y. 354.....	1537
Vosburg v. Huntington, 15 Abb. Pr. 254.....	83, 88, 100
Vose v. Reed, 1 Woods, 647, Fed. Cas. No. 17,011.....	
.....	107, 109, 115, 159, 160
Voshell v. Heaton, 26 Md. 83.....	262, 265
Voshell v. Hyman, 26 Ala. 83.....	117
Voss v. Murray, 50 Ohio St. 28, 32 N. E. 1112.....	1229
Vreeland v. Vreeland, 49 N. J. Eq. 322, 24 Atl. 551, affirming 48	
N. J. Eq. 56, 21 Atl. 627.....	31, 32, 1199
Vreeland v. Vreeland, 53 N. J. Eq. 387, 32 Atl. 3.....	1358, 1359
Vulcan Detinning Co. v. American Can Co. (N. J. Eq.), 58 Atl.	
290.....	491
Vyvyan v. Vyvyan, 30 Beav. 65.....	99

W

Wabash R. Co. In re, 24 Fed. 217.....	303, 322, 1031
Wabash R. Co. v. Central Trust Co., 22 Fed. 272.....	208
Wabash R. Co. v. Dykeman, 133 Ind. 56, 32 N. E. 823....	261, 268, 275

Wabash R. Co. v. Flannigan, 95 Mo. App. 477, 75 S. W. 691....	70, 85
Wabash R. Co. v. Hannahan, 121 Fed. 563.....	1025, 1041, 1053
Wabash R. Co. v. Mirrieles, 182 Mo. 128, 81 S. W. 437.....	1103
Wabaska Electric Co. v. City of Wymore, 60 Neb. 199, 82 N. W. 626.....	535, 605
Wachtel v. Wilde, 58 Ga. 50.....	200
Waco National Bank v. Rogers, 51 Tex. 606.....	740
Waddingham v. Robledo, 6 N. Mex. 347, 28 Pac. 663.....	844
Wade v. Nunnely, 19 Tex. Civ. App. 256, 46 S. W. 668.....	634
Wade v. Ringo, 62 Mo. App. 414.....	330, 1432
Wadge v. Kittleson (N. D.), 97 N. W. 856.....	1338
Wadsworth v. Goree, 96 Ala. 227, 10 South. 848.....	843
Wadsworth v. Laurie, 164 Ill. 42, 49, 45 N. E. 435.....	307
Wadsworth v. Schisselbauer, 32 Minn. 84, 19 N. W. 390.....	1434
Wagar v. Stone, 36 Mich. 367.....	170, 197
Wagenseller v. Prettyman, 7 Ill. App. 192.....	1489
Wagner v. Baird, 7 How. 234, 258, 12 L. ed. 681.....	36, 37
Wagner v. Coen, 41 W. Va. 351, 23 S. E. 735.....	163
Wagner v. Drake, 31 Fed. 849.....	1080
Wagner v. Law, 3 Wash. St. 500, 28 Am. St. Rep. 56, 28 Pac. 1109, 15 L. R. A. 784.....	1441
Wagner v. Meety, 69 Mo. 150.....	610, 622, 623
Wagner v. Shank, 59 Md. 313.....	1099
Wagoner v. Wagoner, 77 Md. 189, 26 Atl. 284.....	493
Wahl v. Barnum, 116 N. Y. 87, 22 N. E. 280, 5 L. R. A. 623....	1516
Wahl v. Cemetery Assn., 197 Pa. St. 197, 46 Atl. 913.....	907
Wahl v. School Directors, 78 Ill. App. 403.....	611
Wahle v. Reinback, 76 Ill. 322.....	794
Wahlgreen v. City of Kansas City, 42 Kan. 243, 21 Pac. 1068..	697
Wahrmund v. Edgewood Distilling Co. (Tex. Civ. App.), 32 S. W. 227.....	1398, 1400
Wait v. Smith, 92 Ill. 385.....	1144
Waite v. Bingley, L. R. 21 Ch. D. 674.....	1195
Waite v. O'Neil, 72 Fed. 348, 76 Fed. 408, 22 C. C. A. 248, 34 L. R. A. 550.....	1314, 1371
Wake v. Conyers, 1 Eden, 331, 2 Lead. Cas. Eq., 4th Am. ed., 850, 853, 860.....	1172, 1173, 1175
Wakefield v. Day, 41 Minn. 344, 43 N. W. 71.....	1250
Wakefield v. Sunday Lake Min. Co., 85 Mich. 605, 39 N. W. 135..	1245
Wakeham v. Barker, 82 Cal. 46, 22 Pac. 1131.....	1275
Wakeman v. Dickey, 19 Abb. Pr. (N. Y.) 124.....	81
Wakeman v. Kingsland, 46 N. J. Eq. 113, 18 Atl. 680.....	65, 75, 84
Waldo v. Preston, 135 Pa. St. 181, 19 Atl. 1078.....	1107
Waldron v. First Nat. Bank, 60 Neb. 245, 82 N. W. 856.....	168
Waldron v. Harvey, 54 W. Va. 608, 102 Am. St. Rep. 959, 46 S. E. 603.....	36, 58, 59
Waldron v. Letson, 15 N. J. Eq. 126.....	1143
Waldron v. Marsh, 5 Cal. 119.....	837
Waley v. Dawson, 2 Schoales & L. 366.....	16
Walker, Ex parte, 25 Ala. 81, 104.....	107, 112, 164, 165
Walker v. Armstrong, 2 Kan. 198.....	1001, 1002
Walker v. Brewster, L. R. 5 Eq. 25.....	869, 957
Walker v. Casgrain, 101 Mich. 604, 608, 60 N. W. 291.....	1394
Walker v. Cheever, 35 N. H. 339.....	1517
Walker v. Covar, 2 S. C. 16.....	1400

Walker v. Cox, 25 Ind. 271.....	1384
Walker v. Cronin (1871), 107 Mass. 555.....	1019, 1038
Walker v. Emerson, 89 Cal. 456, 26 Pac. 968.....	823
Walker v. George Taylor C. Co., 56 Ark. 1, 18 S. W. 1056, 19 S. W. 601.....	307
Walker v. Gilbert, Freem. Ch. (Miss.) 85.....	1113, 1120
Walker v. Green, 60 Kan. 20, 55 Pac. 281.....	344
Walker v. House, 4 Md. Ch. 39, 44.....	148
Walker v. Hunt, 2 W. Va. 491, 98 Am. Dec. 779.....	1132
Walker v. Jeffreys, 1 Hare, 341, 349.....	1338
Walker v. Kelly, 91 Mich. 212, 51 N. W. 934.....	1370
Walker v. Leslie, 90 Ky. 642, 14 S. W. 682.....	1173
Walker v. Lyon, 6 App. D. C. 484.....	1200, 1216
Walker v. McNulty, 19 Misc. Rep. 701, 45 N. Y. Supp. 42.....	502, 511
Walker v. Moltram, 19 Ch. D. 355.....	526
Walker v. Morgan Park, 175 Ill. 370, 51 N. E. 636.....	685
Walker v. Peay, 22 Ark. 103.....	1226
Walker v. Radford, 67 Ala. 446.....	571, 572, 817
Walker v. Robbins, 55 U. S. (14 How.) 584, 14 L. ed. 552.....	1114, 1115
Walker v. Sheperdson, 2 Wis. 384, 60 Am. Dec. 423.....	931, 973
Walker v. Spencer, 13 Jones & S. 71.....	1523
Walker v. Trott, 4 Edw. Ch. 38.....	146
Walker v. Wainwright, 16 Barb. 486.....	558
Walker v. Walker, 51 Ga. 22.....	877
Walker Township v. Thomas, 123 Mich. 290, 82 N. W. 48....	707
Wall v. Beedy, 161 Mo. 625, 61 S. W. 864.....	1439, 1440
Wall v. Bright, 1 Jacob & W. 494.....	1373
Wall v. Meilke, 89 Minn. 232, 94 N. W. 688.....	1142, 1149
Wallace v. Bullen, 6 Okla. 17, 52 Pac. 954.....	730, 732
Wallace v. Hood, 89 Fed. 11.....	371
Wallace v. Long, 105 Ind. 522, 55 Am. Rep. 222, 5 N. E. 666....	1357
Wallace v. Loomis, 97 U. S. 146, 24 L. ed. 895.....	397, 398, 402, 404
Wallace v. Pierce-Wallace Pub. Co., 101 Iowa, 313, 322, 63 Am. St. Rep. 389, 70 N. W. 216, 38 L. R. A. 122.....	209, 222, 225
Wallace v. Scoggins, 17 Or. 476, 21 Pac. 558.....	1253
Wallace v. Sortor, 52 Mich. 159, 17 N. W. 794.....	77
Wallace v. Wallace, 21 App. Div. 542, 48 N. Y. Supp. 592....	309
Wallace's Estate, In re, 59 Pa. St. 401.....	1501
Wallack v. Soc. Ref. Juv. Del., 67 N. Y. 23.....	1082
Walla Walla v. Walla Walla Water Co., 172 U. S. 1, 19 Sup. Ct. 77.....	528, 636
Waller v. Howell, 23 Misc. Rep. 236, 45 N. Y. Supp. 790.....	558
Wallin v. Murphy, 117 Iowa, 640, 91 N. W. 930.....	515
Walling v. Miller, 108 N. Y. 173, 2 Am. St. Rep. 400, 15 N. E. 65.....	309, 316, 317, 319
Wallington v. Taylor, 1 N. J. Eq. 314, 318.....	818
Wallworth v. Holt, 4 Mylne & C. 619.....	1529
Watpole v. Orford, 3 Ves. Jr. 402.....	1290
Walsh v. Association of Master Plumbers (1902), 97 Mo. App. 280, 71 S. W. 455.....	1048
Walsh v. Byrnes, 39 Minn. 527, 40 N. W. 831.....	375
Walsh v. Croft, 27 Mont. 407, 71 Pac. 409.....	714
Walsh v. King, 74 Mich. 350, 41 N. W. 1080.....	645, 705
Walsh v. Rosso, 59 N. J. Eq. 123, 44 Atl. 708.....	375
Walter v. Ashton, [1902] 2 Ch. 282.....	996

Walter v. Jeffreys, 1 Hare, 341, 349.....	1339
Walter v. Selve, 4 De Gex & S. 315.....	882
Walters v. Anglo-American Mort. & T. Co., 50 Fed. 316.....	209
Walters v. Cantrell (Tex. Civ. App.), 66 S. W. 790.....	1133
Walters v. Green, [1899] 2 Ch. 696.....	1023
Walters v. Walters, 132 Ill. 467, 23 N. E. 1120.....	198
Walther v. Seven Corners Bank, 58 Minn. 434, 59 N. W. 1077..	241
Walton v. Crowley, 3 Blatchf. 440, Fed. Cas. No. 17,133.....	990
Walton v. Develing, 61 Ill. 201.....	587, 588
Walton v. Perkins, 33 Minn. 357, 23 N. W. 527.....	1249
Walton v. Walton, 7 Johns. Ch. 258.....	1260, 1380
Walts v. Foster, 12 Or. 247, 7 Pac. 24.....	882, 883
Wamesit etc. Co. v. Sterling Mills, 158 Mass. 435, 33 N. E. 503..	1208
Wanneker v. Hitchcock, 38 Fed. 383.....	164
Wanner v. Wanner, 115 Wis. 196, 91 N. W. 671.....	1159
Waples-Platter Co. v. Mitchell, 12 Tex. Civ. App. 90, 35 S. W. 200.	199
Ward, Appeal of, 100 Pa. St. 289.....	1494
Ward v. Arredondo, Hopk. Ch. 213, 14 Am. Dec. 543.....	29
Ward v. Bank of Abbeville, 130 Ala. 597, 30 South. 341.....	568
Ward v. Board of Commissioners, 12 Mont. 23, 29 Pac. 658....	714
Ward v. Callahan, 49 Kan. 149, 30 Pac. 176.....	1130
Ward v. Connecticut Pipe Mfg. Co., 71 Conn. 345, 71 Am. St.	
Rep. 207, 41 Atl. 1057, 42 L. R. A. 706.....	443, 445, 446, 448
Ward v. Dewey, 16 N. Y. 519, 529.....	1222, 1227, 1238
Ward v. Gardner, 112 Mass. 42.....	1192
Ward v. McKenzie, 33 Tex. 297, 7 Am. Rep. 261.....	1431
Ward v. Pacific Mut. Life Ins. Co., 135 Cal. 235, 67 Pac. 124..	443
Ward v. Peck, 114 Mass. 121.....	1518
Ward v. Petrie, 57 N. Y. 301, 68 Am. St. Rep. 790, 51 N. E.	
1002.....	376
Ward v. Southfield, 102 N. Y. 287, 6 N. E. 660.....	1101
Ward v. Sweeney, 106 Wis. 44, 82 N. W. 169.....	482, 591, 593
Ward v. Ward, 40 W. Va. 611, 52 Am. St. Rep. 911, 29 L. R. A.	
449, 21 N. E. 746.....	1212
Ward v. Waterman, 85 Cal. 488, 24 Pac. 930.....	1145
Warden v. Board of Supervisors of Fond du Lac County, 14	
Wis. 618.....	749, 750
Wardens v. Washington, 109 N. C. 21, 13 S. E. 700.....	634
Wardle v. Hudson, 96 Mich. 432, 55 N. W. 992.....	366
Ware v. Horwood, 14 Ves. 28, 31.....	1075
Ware v. Purdy (Iowa), 60 N. W. 526.....	1452
Ware v. Regents' Canal Co., 3 De Gex & J. 212.....	545
Ware v. Ware, 42 Ga. 408.....	165
Ware v. Ware, 6 N. J. Eq. 117.....	818
Warfield v. Owens, 4 Gill. (Md.), 364.....	190
Warfield v. Warfield, 5 Har. & J. 459.....	1210
Warford v. Hankins, 150 Ind. 489, 50 N. E. 468.....	1499
Waring v. Wadsworth, 80 N. C. 345.....	1210
Warlier v. Williams, 53 Neb. 143, 73 N. W. 539.....	834, 850
Warner v. Baynes, Amb. 589.....	1188, 1190
Warner v. Conant, 24 Vt. 351, 58 Am. Dec. 178.....	1076
Warner v. Gouverneur, 1 Barb. 36.....	167
Warner v. Imbeau, 63 Kan. 415, 65 Pac. 648.....	379, 381
Warner v. Jacob, L. R. 20 Ch. D. 220.....	566
Warner v. McMullin, 131 Pa. St. 370, 18 Atl. 1056, 25 Wkly.	
Not. Cas. 157.....	1519
Equitable Remedies, Vol. II—113	

Warner v. Rising Fawn Iron Co., 3 Woods, 514, Fed. Cas. No. 17,188.....	166, 255
Warner v. Western Assur. Co. (Va.), 49 S. E. 499.....	1139
Warren v. Brown, 71 L. J. K. B. 12, [1902] L. R. 1 K. B. 15, 85 L. T. 444, 50 Week. Rep. 97.....	940, 944
Warren v. Cook, 116 Ill. 199, 5 N. E. 538.....	1076
Warren v. Kohr, 26 Tex. Civ. App. 331, 64 S. W. 62.....	1130
Warren v. Pitts, 114 Ala. 65, 21 South. 494.....	107, 111, 167, 169
Warren v. Twilley, 10 Md. 39.....	1206
Warren v. Union Bank, 157 N. Y. 259, 68 Am. St. Rep. 777, 51 N. E. 1036, 43 L. R. A. 256.....	1097
Warren v. Westbrook Mfg. Co., 88 Me. 58, 51 Am. St. Rep. 372, 33 Atl. 665, 35 L. R. A. 388.....	1187
Warren Mills v. New Orleans Seed Co., 65 Miss. 391, 7 Am. St. Rep. 671, 4 South. 298.....	833
Warrin v. Baldwin, 105 N. Y. 534, 12 N. E. 49.....	619
Warwick v. Stockton, 55 N. J. Eq. 61, 36 Atl. 488.....	141, 143, 144, 145
Washburn v. Burnham, 63 N. Y. 132.....	1227, 1236
Washington v. Norwood, 128 Ala. 383, 30 South. 405.....	1437
Washington v. Soria, 73 Miss. 665, 55 Am. St. Rep. 555, 19 South. 485.....	38, 1354
Washington Brewery Co. v. Carry (Md.), 24 Atl. 151.....	1354
Washington Co. Commrs. v. Board of County School Commrs., 77 Md. 283, 26 Atl. 115.....	590
Washington & I. R. Co. v. Cœur d'Alene etc. Co., 2 Idaho, 580, 21 Pac. 562.....	822
Washington Iron Works Co. v. Jensen, 3 Wash. 584, 28 Pac. 1019.....	187
Washington Life Ins. Co. v. Fleischauer, 10 Hun, 117.....	184
Washington Life Ins. Co. v. Gooding, 19 Tex. Civ. App. 490, 49 S. W. 123.....	66
Washington Life Ins. Co. v. Lawrence, 28 How. Pr. 435.....	101
Washington Lodge v. Frelinghuysen (Mich.), 101 N. W. 569....	41
Wason v. Frank, 7 Colo. App. 541, 44 Pac. 378.....	355, 358, 359, 364
Wason v. Major, 10 Colo. App. 181, 50 Pac. 741.....	670, 671
Wass v. Mugridge, 128 Mass. 394.....	1383
Waterbury v. Merchants' Union Express Co., 50 Barb. 157.....	212
Waterbury Savings Bank v. Lawler, 46 Conn. 243, 246.....	672, 673, 1223, 1227
Waterloo Co. v. Doe, 82 Fed. 45, 27 C. C. A. 50.....	843
Waterloo Water Co. v. Hoxie, 89 Iowa, 317, 56 N. W. 499.....	768
Waterman v. Banks, 144 U. S. 394, 12 Sup. Ct. 646, 36 L. ed. 479.....	1328
Waters v. Lewis, 106 Ga. 758, 32 S. E. 854.....	1223
Waters v. Melson, 112 N. C. 89, 16 S. E. 918.....	279
Waters v. Taylor, 15 Ves. 10.....	142, 146
Watertown v. Mayo, 109 Mass. 315, 12 Am. Rep. 694.....	468
Watkins v. Brent, 1 Mylne & C. 97, 102.....	140
Watkins v. Brunt, 53 Ind. 208.....	1227
Watkins v. Dorsett, 1 Bland, 530, 533, 534, 535.....	1415
Watkins v. Holman, 16 Pet. 25, 10 L. ed. 873.....	25
Watkins v. Landon, 67 Minn. 136, 69 N. W. 711.....	1104
Watkins v. Minnesota Thresher Mfg. Co., 41 Minn. 150, 42 N. W. 862.....	401
Watkins v. National Bank, 51 Kan. 254, 32 Pac. 914.....	207
Watkins v. Richmond College, 41 Mo. 302.....	1478
Watkins v. Worthington, 2 Bland, 531.....	1401

Watrous v. Allen, 57 Mich. 362, 58 Am. Rep. 363, 24 N. W. 104.....	506
Watson v. Bettman, 88 Fed. 825.....	277
Watson v. Columbia, 77 Mo. App. 267.....	862
Watson v. Fairmount & S. Ry. Co., 49 W. Va. 528, 39 S. E. 193... 773	
Watson v. Ferrell, 34 W. Va. 406, 12 S. E. 724.....	826, 827
Watson v. Hunter, 5 Johns. Ch. 169, 9 Am. Dec. 295.....	805, 814
Watson v. Jones, 13 Wall. 679, 20 L. ed. 666.....	560, 561, 562, 563
Watson v. Lion Brewing Co., 61 Mich. 595, 28 N. W. 726.....	1234
Watson v. Mead, 98 Mich. 330, 57 N. W. 181.....	1441
Watson v. New Milford etc. Co., 71 Conn. 442, 42 Atl. 265.....	869, 968
Watson v. Northumberland, 11 Ves. 155.....	1182, 1183
Watson v. Reid, 1 Russ. & M.....	1337, 1339
Watson v. Sutherland, 5 Wall. 74, 18 L. ed. 580.....	482, 834, 1132
Watson v. Texas & P. Ry. Co. (Tex. Civ. App.), 73 S. W. 830... 37	
Watson v. White, 152 Ill. 364, 38 N. E. 902.....	1332
Watt v. Conger, 13 Smedes & M. 412.....	1518
Watts v. Burgess (Ala.), 23 South. 763.....	1445
Watts v. Waddle, 6 Pet. 388, 393, 8 L. ed. 437.....	1337
Watts v. Watts, L. R. 17 Eq. 217.....	1378
Waugh v. Blumenthal, 28 Mo. 462.....	1182
Waukesha v. Village of Waukesha, 83 Wis. 475, 53 N. W. 675... 923	
Waupun v. Moore, 34 Wis. 450, 17 Am. Rep. 446.....	795
Wauwatosa v. Dreutzer, 116 Wis. 117, 92 N. W. 551.....	914
Way v. Fox, 109 Iowa, 340, 80 N. W. 405.....	628
Way v. Lamb, 15 Iowa, 79.....	1119
Way v. Roth, 159 Ill. 162, 42 N. E. 321.....	1139
Way Cross etc. Co. v. Southern Pine Co., 111 Ga. 233, 36 S. E. 641.....	858
Wayland v. Tucker, 4 Gratt. 267, 50 Am. Dec. 76.....	1482
Waymire v. S. F. & S. M. Ry. Co., 112 Cal. 646, 44 Pac. 1086... 1082	
Waymire v. Waymire, 141 Ind. 164, 40 N. E. 523.....	1348
Wayne Pike Co. v. Hammond, 129 Ind. 368, 27 N. E. 487... 213, 217	
Wayne Pike Co. v. State, 134 Ind. 672, 34 N. E. 440... 330, 334, 353	
Weakley v. Page, 102 Tenn. 178, 53 S. W. 551, 46 L. R. A. 552.. 872	
Wearin v. Munson, 62 Iowa, 466, 17 N. W. 746.....	809
Weatherby v. Capital City Water Co., 115 Ala. 156, 22 South. 140.....	220, 233
Weatherford, M. W. & N. W. Ry. Co. v. Wood, 88 Tex. 191, 30 S. W. 859, 28 L. R. A. 526.....	1353
Weaver v. Duncan (Tenn. Ch. App.), 56 S. W. 39.....	321, 322
Weaver v. Eureka Lake Co., 15 Cal. 271.....	905, 906
Weaver v. Gregg, 6 Ohio St. 547, 67 Am. Dec. 355.....	1206
Weaver v. Haviland, 142 N. Y. 534, 40 Am. St. Rep. 631, 37 N. E. 641.....	1428, 1437
Weaver v. Snively (Neb.), 102 N. W. 77.....	1385
Weaver v. Toney, 107 Ky. 419, 54 S. W. 732, 50 L. R. A. 105... 589	
Weaver v. Vanderwanter, 84 Tex. 691, 19 S. W. 889.....	1100, 1124
Webb v. Allen, 15 Tex. Civ. App. 605, 40 S. W. 342.....	142, 262, 269
Webb v. Demopolis (Ala.), 13 South. 289.....	923
Webb v. Drake (1900), 52 La. Ann. 290, 26 South. 791.....	1048
Webb v. Fuller, 77 Me. 568, 1 Atl. 737.....	1520, 1521
Webb v. Hughes, L. R. 10 Eq. 281.....	1336, 1339, 1340
Webb v. Hunt, 2 Ind. Ter. 612, 53 S. W. 437.....	1402
Webb v. Laird, 62 Vt. 448, 22 Am. St. Rep. 121, 20 Atl. 599... 1484	
Webb v. Osborne, 15 Daly, 406, 7 N. Y. Supp. 762.....	299

Webb v. Ridgely, 38 Md. 364.....	548
Webb v. Staves, 37 N. Y. Supp. 414, 1 App. Div. 145.....	1421
Webb v. Van Zandt, 16 Abb. Pr. 314.....	187
Weber v. Dillon, 7 Okla. 568, 54 Pac. 894.....	731
Weber v. San Francisco, 1 Cal. 455....	670
Webster v. Cecil, 30 Beav. 62.....	1303, 1304, 1305
Webster v. Cooke, 23 Kan. 637.....	849
Webster v. Douglas County, 102 Wis. 181, 72 Am. St. Rep. 870, 77 N. W. 885.....	611, 625
Webster v. Harris, 111 Tenn. 668, 69 S. W. 782, 59 L. R. A. 324.....	970
Webster v. Harwinton, 32 Conn. 131.....	600
Webster v. Lincoln, 50 Neb. 1, 69 N. W. 394.....	717
Webster v. McDaniel, 2 Del. Ch. 297.....	82
Webster v. Skipwith, 26 Miss. 341.....	1095
Wedgwood v. Adams, 6 Beav. 600.....	1314
Weed v. Hunt, 76 Vt. 212, 56 Atl. 980.....	1108
Weed v. Small, 7 Paige, 573.....	1516
Weeks v. Milwaukee, 10 Wis. 242.....	751
Weeks v. Weeks, 5 Ired. Eq. 111, 47 Am. Dec. 358....	1186, 1194, 1199
Weeks v. Weeks, 106 N. Y. 626, 13 N. E. 96.....	389, 1209
Weener v. Brayton, 152 Mass. 101, 25 N. E. 46, 8 L. R. A. 640....	991
Wees v. Coal etc. Co., 54 W. Va. 421, 46 S. E. 166.....	908
Wehmer v. Fokenga, 57 Neb. 510, 78 N. W. 28.....	564, 850
Wehrman v. Conklin, 155 U. S. 314, 15 Sup. Ct. 129, 39 L. ed. 167.....	1241, 1245, 1441
Weightman v. Hatch, 17 Ill. 286.....	1434
Weightman v. Washington Critic Co., 4 App. D. C. 136.....	1443
Weil v. Calhoun, 25 Fed. 865.....	589
Weill v. First Nat. Bank, 106 N. C. 1, 11 S. E. 277.....	356, 360
Weimer v. Talbot (W. Va.), 49 S. E. 372.....	1481
Weingarten v. Marcus, 121 Ala. 187, 25 South. 852.....	1410
Weingartner v. Insurance Co., 32 Fed. 314.....	449
Weinstock, Lubin & Co. v. Marks, 109 Cal. 529, 50 Am. St. Rep. 57, 42 Pac. 142, 30 L. R. A. 182.....	996
Weir v. Cordy-Fisher Lumber Co. (Mo.), 85 S. W. 341.....	59
Weis v. Goetter, 72 Ala. 259.....	201
Weise v. Welsh, 30 N. J. Eq. 431.....	1209
Weiss v. Herlihy, 23 App. Div. 608, 49 N. Y. Supp. 81.....	578
Weissenborn v. Sieghortner, 21 N. J. Eq. 483, reversing 20 N. J. Eq. 172.....	144
Weitz v. Independent Dist. of Des Moines, 87 Iowa, 81, 54 N. W. 70.....	630
Weland v. Hanagan, 70 Minn. 349, 73 N. W. 169.....	360
Welch v. Agar, 84 Ga. 583, 20 Am. St. Rep. 380, 11 S. E. 149....	1195
Welch v. Anderson, 28 Mo. 293.....	1198
Welch v. Astoria, 26 Or. 89, 37 Pac. 66.....	736
Welch v. Austin (Mass.), 72 N. E. 972.....	505
Welch v. Clatsop County, 24 Or. 452, 33 Pac. 934.....	733, 735
Welch v. Sargent, 127 Cal. 72, 82, 59 Pac. 319.....	1460, 1469, 1473
Welch v. Thompson, 39 Ga. 559, 99 Am. Dec. 470.....	1193
Weller v. J. B. Pace Tobacco Co., 2 N. Y. Supp. 292.....	446
Weller v. St. Paul, 5 Minn. 95.....	1237
Weller v. Smeaton, 1 Cox, 102, 1 Brown Ch. 572.....	880
Welles v. Rhodes, 59 Conn. 498, 22 Atl. 286.....	1223
Welles v. Yates, 44 N. Y. 525.....	1742
Wellesley v. Wellesley, 6 Sim. 497.....	813

Wellington & P. R. Co. v. Cashie etc. Co., 116 N. C. 924, 20 S. E. 964.....	766
Wells v. Brown, 83 Ala. 161, 3 South. 439.....	1533
Wells v. Buffalo, 80 N. Y. 253.....	1228, 1236
Wells v. Calnan, 107 Mass. 514, 9 Am. Rep. 65.....	1390
Wells v. Cooper, cited 6 Ves. 139.....	1517
Wells v. Hartford Manila Co., 76 Conn. 27, 55 Atl. 599.....	391
Wells v. Higgins, 132 N. Y. 459, 30 N. E. 861.....	392
Wells v. Houston (Tex.), 56 S. W. 233.....	1191
Wells v. Houston, 23 Tex. Civ. App. 629, 57 S. W. 584.....	1165
Wells v. Miller, 66 N. Y. 255.....	1482
Wells v. National City Bank, 40 App. Div. 498, 29 Civ. Proc. Rep. 158, 58 N. Y. Supp. 125.....	68
Wells v. Ragsdale, 102 Ga. 53, 29 S. E. 165.....	629
Wells v. Smith, 2 Edw. Ch. 78, 7 Paige, 22, 31 Am Dec. 274....	1333, 1341
Wells v. Sweeney (S. D.), 94 N. W. 394.....	1192
Wells v. Western Paving etc. Co., 96 Wis. 116, 70 N. W. 1071....	749, 754, 755, 756, 757, 758
Wells, Fargo & Co. v. Crawford County, 63 Ark. 576, 40 S. W. 710, 37 L. R. A. 371.....	666
Wells, Fargo & Co. v. Dayton, 11 Nev. 161.....	643, 719
Wells, Fargo & Co. v. Miner, 25 Fed. 533, 537.....	72, 79, 85, 101
Wells, Fargo & Co. v. Northern Pac. R. Co., 23 Fed. 469.....	1062
Welsbach Light Co. v. American Incandescent Lamp Co., 99 Fed. 501.....	1057
Welsh v. Freeman, 21 Ohio St. 402.....	1216
Welsh v. New York El. R. Co. (Com. Pl.), 12 N. Y. Supp. 545....	781
Welsh v. Whelpley, 62 Mich. 15, 4 Am. St. Rep. 810, 28 N. W. 744.....	1296
Welsh v. Williams (Miss.), 37 South. 561.....	1290
Welton v. Dickson, 38 Neb. 767, 41 Am. St. Rep. 771, 57 N. W. 559, 22 L. R. A. 496.....	764
Welty v. Jacobs, 171 Ill. 624, 40 N. E. 723, 40 L. R. A. 98.....	496, 498, 521
Wende v. Sozialer Turn Verein, 66 Ill. App. 591.....	914
Wenegar v. Bollenbach, 180 Ill. 222, 54 N. E. 192.....	1162, 1165
Wenger v. Fisher (W. Va.), 46 S. E. 695.....	766
Wenstrom Electric Co. v. Bloomer, 85 Hun, 389, 32 N. Y. Supp. 903.....	83
Werborn v. Kahn, 93 Ala. 201, 9 South. 729.....	164, 165, 200
Werner v. Leisen, 31 Wis. 169.....	1526
Werner v. Murphy, 60 Fed. 769.....	329, 372, 373
Wesley v. Eels, 177 U. S. 370, 20 Sup. Ct. 661, 44 L. ed. 810....	1321, 1324
Wesley Church v. Moore, 10 Pa. St. 273.....	1475, 1477, 1480
West v. Brown, 114 Ala. 118, 21 South. 452.....	942
West v. Chasten, 12 Fla. 315.....	147
West v. Conant, 100 Cal. 231, 34 Pac. 705.....	178
West v. Mayor, 10 Paige, 539.....	632, 1087
West v. Ponca City Milling Co. (Okla.), 79 Pac. 100.....	888
West v. Suda, 69 Conn. 60, 36 Atl. 1015.....	1145
West v. Utica, 71 Hun, 540, 24 N. Y. Supp. 1075.....	619
West v. Walker, 3 N. J. Eq. 279.....	834
West v. Webster (Tex. Civ. App.), 87 S. W. 196.....	1353
West Arlington Imp. Co. v. Mt. Hope Retreat, 97 Md. 191, 54 Atl. 982.....	61

Westbrook Mfg. Co. v. Warren, 77 Me. 437, 1 Atl. 246.....	968
West Coast Imp. Co. v. Winsor, 8 Wash. 490, 36 Pac. 441.....	851
Western v. Maedermott, L. R. 2 Ch. App. 72.....	510
Western Electric Co. v. Anthracite Tel. Co., 100 Fed. 301....	983
Western Maryland R. Co. v. Owings, 15 Md. 199, 74 Am. Dec. 563.....	545, 764
Western Maryland R. Co. v. Patterson, 37 Md. 125.....	768
Western, N. Y. & P. R. Co. v. Penn Refining Co. (C. C. A.), 137 Fed. 343.....	350
Western R. v. Alabama G. T. R. Co., 96 Ala. 272, 11 South. 483, 17 L. R. A. 474.....	762, 773
Western R. Co. v. Babcock, 6 Met. 346.....	1303, 1304, 1305, 1312
Western R. Co. v. Nolan, 48 N. Y. 514.....	720
Western Union Tel. Co. v. American Bell Tel. Co., 125 Fed. 342, 60 C. C. A. 220.....	1520
Western Union Tel. Co. v. Davenport, 97 U. S. 369, 24 L. ed. 1047.....	1397
Western Union Tel. Co. v. Myatt, 98 Fed. 335.....	586
Western Union Tel. Co. v. New York, 38 Fed. 552, 3 L. R. A. 449.....	607
Western Union Tel. Co. v. Norman, 77 Fed. 13, 21.....	646
Western Union Tel. Co. v. Pittsburg, C. C. & St. L. R. Co., 137 Fed. 435.....	30
Western Union Tel. Co. v. Poe, 61 Fed. 449, 453.....	646
Western Union Tel. Co. v. Rogers, 42 N. J. Eq. 311, 11 Atl. 13....	517
Western Union Tel. Co. v. St. Joseph & W. R. Co., 1 McCrary, 565, 3 Fed. 430.....	498
Western Union Tel. Co. v. Union Pac. R. Co., 1 McCrary, 558, 3 Fed. 423.....	498
Western Union Tel. Co. v. Western & Atlantic R., 8 Baxt. 54....	33
Western Union Tel. Co. v. Winnsboro (S. C.), 50 S. E. 870.....	738
Westmacott v. Robins, 4 De Gex, F. & J. 390.....	1366, 1369, 1371
Westervelt v. Haff, 2 Sandf. Ch. 101.....	1205
Westervelt v. National Paper etc. Co., 154 Ind. 673, 57 N. E. 552.....	490, 491
West Ham etc. Board v. East London Water Works Co., 69 L. J. Ch. 257, [1900] 1 Ch. 624, 84 L. T., N. S., 85, 48 Week. Rep. 284.....	803
Westhead v. Riley, L. R. 25 Ch. Div. 413.....	119
Westinghouse Air-Brake Co. v. Burton Stock Car Co., 77 Fed. 301, 23 C. C. A. 174.....	984
West Jersey & S. R. Co. v. Waterford Tp., 64 N. J. Eq. 157, 55 Atl. 157.....	638
West Jersey R. Co. v. Camden, G. & W. Ry. Co., 52 N. J. Eq. 1, 29 Atl. 423.....	770
West Jersey & S. R. Co. v. Smith (N. J. Ch.), 60 Atl. 757.....	1133
Westminster Co. v. Clayton, 36 L. J. Ch. 476.....	920
Westmoreland etc. Gas Co. v. De Witt, 130 Pa. St. 235, 18 Atl. 724, 5 L. R. A. 731.....	835, 846
Weston v. Estey, 22 Colo. 341, 45 Pac. 367.....	1251, 1252
Weston v. Stoddard, 137 N. Y. 119, 33 Am. St. Rep. 697, 33 N. E. 62, 20 L. R. A. 624.....	1198
Weston v. Watts, 1 N. Y. St. Rep. 763.....	146
Weston Paper Co. v. Pope, 155 Ind. 394, 57 N. E. 719, 56 L. R. A. 899.....	906, 925, 967
West Point I. Co. v. Moroni etc. Co., 21 Utah, 229, 61 Pac. 16....	925
West Point I. Co. v. Reymert, 45 N. Y. 703.....	848

West Portland Park Assn. v. Kelly , 29 Or. 412, 45 Pac. 901.....	735
West Pub. Co. v. Lawyers' Co-op. Pub. Co. , 53 Fed. 265.....	986
West Va. Trans. Co. v. Ohio River Pipe Line Co. , 22 W. Va. 626, 46 Am. Rep. 527.....	507
Wetherbee v. Baker , 35 N. J. Eq. 501.....	1451, 1460, 1469, 1470
Wetherbee v. Dunn , 36 Cal. 249.....	1173
Wetmore v. Scovell , 3 Edw. Ch. 515.....	989
Wetmore v. Zabriskie , 29 N. J. Eq. 62.....	1183, 1186, 1191
Wetzel v. Minnesota Ry. Transfer Co. , 65 Fed. 23, 12 C. C. A. 490, 27 U. S. App. 594; affirmed, 169 U. S. 237, 241, 18 Sup. Ct. 307, 42 L. ed. 730.....	43, 44, 52, 54, 62
Wetzstein v. Boston & M. Consol. C. & S. M. Co. , 25 Mont. 135, 63 Pac. 1043, 1044.....	485
Whalen v. Stephens , 193 Ill. 121, 61 N. E. 921.....	1526
Whaley v. Dawson , 2 Schoales & L. 367.....	1215
Whaley v. New York , 83 App. Div. 6, 81 N. Y. Supp. 1043.....	920
Whaley v. Wilson , 112 Ala. 627, 20 South. 922.....	927
Whatman v. Gibson , 9 Sim. 196.....	503
Wheat v. Bank of California , 119 Cal. 4, 50 Pac. 842, 51 Pac. 47.....	354, 362
Wheat Field v. Brush Valley Trop. , 25 Pa. St. 112.....	1487
Wheatley v. Baugh , 25 Pa. St. 528, 64 Am. Dec. 721.....	898
Wheatley v. Calhoun , 12 Leigh (Va.), 264, 37 Am. Dec. 654....	1497
Wheaton v. Daily Tel. Co. , 59 C. C. A. 427, 124 Fed. 61....	301, 367
Wheaton v. Maple , [1893] L. R. 3 Ch. D. 48.....	946
Wheeler v. Alderman , 34 S. C. 533, 27 Am. St. Rep. 842, 13 S. E. 673.....	1099
Wheeler v. Bedford , 54 Conn. 244, 7 Atl. 22.....	940, 941
Wheeler v. Dime Savings Bank , 116 Mich. 271, 72 Am. St. Rep. 521, 74 N. W. 496.....	449
Wheeler v. Fire Commrs. , 46 La. Ann. 731, 15 South. 179.....	592
Wheeler v. Pullman Iron etc. Co. , 43 Ill. App. 626....	213
Wheeler v. Pullman Iron etc. Co. , 143 Ill. 197, 32 N. E. 420, 17 L. R. A. 818.....	209, 238
Wheeler v. Smith , 81 Fed. 319.....	338
Wheeler v. Walton etc. Co. , 64 Fed. 664, 667.....	303
Wheeler v. Walton etc. Co. , 65 Fed. 720....	309, 312, 318
Wheeling Bridge & Terminal Ry. Co. v. Reymann Brewing Co. , 90 Fed. 189, 32 C. C. A. 571.....	40
Wheelock v. Noonan , 108 N. Y. 179, 15 N. E. 67, 2 Am. St. Rep. 405, affirming 53 N. Y. Super. Ct. (21 Jones & S.) 286.....	847, 851, 857
Wheelock v. Overshiner , 110 Mo. 100, 19 S. W. 640.....	1206
Whipple v. Gibson , 158 Ill. 339, 41 N. E. 1017.....	1229
Whitaker v. McBride (Neb.) , 98 N. W. 877.....	1070
Whitbeck v. Whiting , 59 Ill. App. 520.....	88
White, Ex parte , 82 N. C. 377.....	1217
White, In re , 113 Cal. 282, 45 Pac. 323.....	494
White v. Banks , 21 Ala. 705, 56 Am. Dec. 283.....	1482
White v. Berry , 171 U. S. 366, 18 Sup. Ct. 917, 43 L. ed. 199..	594, 595
White v. Cabal's Admr. , 2 Swan, 550.....	1077
White v. Codd (Wash.) , 80 Pac. 836.....	1069
White v. Costigan , 138 Cal. 564, 72 Pac. 178.....	55
White v. Crow , 110 U. S. 183, 4 Sup. Ct. 71, 28 L. ed. 113.....	1119
White v. Damon , 7 Ves. 30.....	1312
White v. Flannagan , 1 Md. 525, 54 Am. Dec. 668.....	936, 940, 946

White v. Frankel, 12 Misc. Rep. 271, 33 N. Y. Supp. 1....	307
White v. Fulghum, 87 Tenn. 281, 10 S. W. 501.....	1398, 1401
White v. Gove, 183 Mass. 333, 67 N. E. 359.....	704
White v. Griggs, 54 Iowa, 650, 7 N. W. 125.....	170, 178
White v. Joy, 13 N. Y. 83.....	363
White v. Manhattan R. Co., 139 N. Y. 19, 34 N. E. 887.....	782
White v. Miller, 47 Ind. 385.....	1478
White v. Mooers, 86 Me. 62, 65, 29 Atl. 936....	1384
White v. Nutt, 1 P. Wms. 61.....	1392
White v. Polleys, 20 Wis. 503, 91 Am. Dec. 432.....	1403
White v. Raymond, 188 Ill. 298, 58 N. E. 976.....	676, 683
White v. Schurer, 4 Baxt. 23.....	1491
White v. Smith (N. J. Eq.), 60 Atl. 399.....	1200
White v. Stender, 24 W. Va. 615, 49 Am. Rep. 283.....	748
White v. Tide Water Oil Co., 50 N. J. Eq. 1, 25 Atl. 199.....	938, 940, 947, 952, 955
White v. Wahlenberg, 113 Iowa, 236, 84 N. W. 1026.....	596
White v. White, 130 Cal. 597, 80 Am. St. Rep. 150, 62 Pac. 1062..	257
White v. White, L. R. 15 Eq. 235.....	1149
White v. White, 16 Gratt. 267, 80 Am. Dec. 706.....	1192
White v. White, 30 Vt. 338.....	1477
Whitecar v. Michenor, 37 N. J. Eq. (10 Stew.) 6, 14.....	959
Whitechurch v. Hide, 2 Atk. 391, Ames, Cas. in Eq. Jur. 661....	1002
Whitehead v. Hale, 118 N. C. 601, 24 S. E. 360.....	115, 186
Whitehead v. Kitson, 119 Mass. 484.....	1057
Whitehead v. Shattuck, 138 U. S. 146, 11 Sup. Ct. 276, 34 L. ed. 873.....	1232
Whitehead v. Wooten, 43 Miss. 523.....	167, 169, 262, 265
Whitehouse v. Point Defiance T. & E. Ry. Co., 9 Wash. 558, 38 Pac. 152.....	117
Whitelegg v. Whitelegg, 1 Bro. C. C. 57.....	809, 810
Whiteman v. Fayette Fuel Gas. Co., 139 Pa. St. 492, 20 Atl. 1062.....	532, 1069
Whiteside v. Hoskins, 20 Mont. 361, 51 Pac. 739.....	1432
White Water etc. Co. v. Comegys, 2 Ind. 469.....	88, 90
White Water Valley Canal Co. v. Vallette, 21 How. 414, 16 L. ed. 154.....	231
Whitfield, Ex parte, 2 Atk. 315.....	138
Whitfield v. Bewit, 2 P. Wms. 240.....	803, 815
Whitfield v. Rogers, 26 Miss. (4 Cush.) 84, 59 Am. Dec. 244....	873, 874, 893, 931, 932
Whiting v. Burke, L. R. 6 Ch. 342.....	1482
Whiting v. Sheboygan etc. R. Co., 25 Wis. 167, 3 Am. Rep. 30....	622
Whiting v. Whiting, 15 Gray, 504.....	1184
Whitley v. Challis, [1892] 1 Ch. 64.....	166
Whitley v. Dunham Lumber Co., 89 Ala. 493, 7 South. 810.....	565
Whitlock v. Consumers' etc. Co., 127 Ind. 62, 26 N. E. 570.....	830
Whitlock v. Uhle, 75 Conn. 423, 53 Atl. 891.....	901
Whitman v. Robinson, 21 Md. 43.....	147, 1526
Whitney v. Buckman, 26 Cal. 447.....	157
Whitney v. Burr, 115 Ill. 289, 3 N. E. 434.....	1263
Whitney v. Cowan, 55 Miss. 626, 647..	70
Whitney v. Fox, 166 U. S. 637, 17 Sup. Ct. 713, 41 L. ed. 1145..	45
Whitney v. Hanover Nat. Bank, 71 Miss. 1009, 15 South. 33, 23 L. R. A. 531.....	262
Whitney v. Mayor etc., 28 Barb. 233.....	601, 605
Whitney v. New Haven, 58 Conn. 450, 20 Atl. 666.....	606

Whitney v. N. G. & A. R. Co., 66 How. Pr. 436.....	274
Whitney v. N. Y. & A. R. Co., 66 How. Pr. 436.....	260
Whitney v. Port Huron, 88 Mich. 269, 24 Am. St. Rep. 291, 50 N. W. 316.....	1223
Whitney v. Robbins, 17 N. J. Eq. 360.....	1451
Whitney v. Stone, 23 Cal. 275.....	1271
Whitney v. Union etc. Ry. Co., 11 Gray, 359, 71 Am. Dec. 715, 501, 511	
Whitney v. Welch, 2 Abb. N. C. 442.....	260, 267
Whiton v. Whiton, 179 Ill. 32, 55, 73 N. E. 722.....	1260
Whitridge v. Whitridge, 76 Md. 54, 24 Atl. 645.....	52
Whittaker v. Amwell Nat. Bank, 52 N. J. Eq. 400, 29 Atl. 203.....	1399
Whittaker v. Howe, 3 Beav. 383.....	497, 524, 1274
Whittaker v. Whittaker, 4 Bro. C. C. 31.....	1376
Whitted v. Fuguay, 127 N. C. 68, 72, 37 S. E. 141.....	1312
Whittemore v. Farrington, 76 N. Y. 452.....	1140
Whitten v. Whitten, 36 N. H. 332.....	1184, 1194
Whittlesey v. Delaney, 73 N. Y. 571.....	375
Whitton v. Whitton, 38 N. H. 127, 75 Am. Dec. 163.....	1203, 1205
Whitworth v. Lowell, 178 Mass. 43, 59 N. E. 760.....	1140
Whitworth v. Whyddon, 2 Maen. & G. 52, 55.....	139, 140
Whitwood Chemical Co. v. Hardman, [1891] L. R. 2 Ch. 416.....	520
Wickens v. Townshend, 1 Russ. & M. 361.....	298
Wickersham v. Comerford, 96 Cal. 433, 31 Pac. 358.....	1101, 1105
Wiedemann v. Sann (N. J. Eq.), 31 Atl. 211.....	186
Wiedner v. Thompson, 66 Iowa, 283, 33 N. W. 670.....	570
Wieland v. Shillock, 24 Minn. 345.....	469
Wiemer v. Louisville Water Co., 130 Fed. 251.....	1063
Wier's Appeal, 74 Pa. St. 230.....	870, 891
Wiggin v. Swamscot Mach. Co., 68 N. H. 14, 38 Atl. 727.....	50
Wiggins v. Armstrong, 2 Johns. Ch. 144.....	198
Wiggins v. A. T. & S. F. R. Co., 9 Okla. 118, 59 Pac. 248.....	732
Wiggins v. Middleton, 117 Ga. 162, 43 S. E. 433.....	837
Wilcox v. Continental L. Ins. Co., 56 Conn. 468, 16 Atl. 244.....	381
Wilcox v. Henry (Wash.), 77 Pac. 1055.....	931
Wilcox v. Pratt, 125 N. Y. 688, 25 N. E. 1091, affirming 52 Hun, 340, 5 N. Y. Supp. 361.....	143, 145
Wilcox v. Steel, [1904] 1 Ch. 212.....	1002
Wilcox v. Wheeler, 47 N. H. 488.....	856
Wilcox & Howe Co., In re, 70 Conn. 220, 39 Atl. 163.....	372, 373
Wilcox Lumber Co. v. Bullock, 109 Ga. 532, 35 S. E. 52.....	826
Wilcoxon v. Wilcoxon, 199 Ill. 244, 65 N. E. 229.....	62
Wild v. Milne, 26 Beav. 504.....	1189, 1534
Wild v. Wells, 1 Dick. 3, Toth. 82.....	1166
Wilder v. Underwood, 60 Kan. 859, 57 Pac. 965.....	591
Wilds v. Layton, 1 Del. Ch. 226, 12 Am. Dec. 91.....	803
Wilfong v. Johnson, 41 W. Va. 283, 23 S. E. 730.....	1159
Wilhelm v. Locklar (Fla.), 35 South. 6.....	1428
Wilkes v. Adler, 68 Tex. 689, 5 S. W. 497.....	1400
Wilkie v. Chicago, 188 Ill. 444, 80 Am. St. Rep. 182, 58 N. E. 1004.....	633
Wilkin v. Wilkin, 1 Johns. Ch. 111, 118.....	1200
Wilkins v. Gibson, 113 Ga. 31, 84 Am. St. Rep. 204, 38 S. E. 374.....	1499, 1500
Wilkins v. Mayor etc., 9 Misc. Rep. 610, 30 N. Y. Supp. 424.....	620
Wilkins v. Sherwood, 35 Minn. 154, 56 N. W. 591.....	469, 1103

Wilkinson v. Bertock etc. Co., 111 Ga. 187, 36 S. E. 623...	1468, 1473
Wilkinson v. Colley, 164 Pa. St. 35, 30 Atl. 286, 35 Wkly. Not.	
Cas. 177, 26 L. R. A. 114.....	524, 536
Wilkinson v. Henderson, 1 Mylne & K. 582.....	1537
Wilkinson v. Hiller, 71 Miss. 678, 14 South. 442.....	1229
Wilkinson v. Joberns, L. R. 16 Eq. 14.....	1194
Wilkinson v. Market, 65 N. J. L. 518, 47 Atl. 488.....	195, 196
Wilkinson v. Paddock, 57 Hun, 191, 11 N. Y. Supp. 442, affirmed on appeal, 125 N. Y. 748, 27 N. E. 407.....	309
Wilkinson v. Parish, 3 Paige, 653.....	1182, 1192, 1206
Wilkinson v. Rutherford, 49 N. J. L. 244, 8 Atl. 507.....	359
Wilkinson v. Stitt, 175 Mass. 581, 56 N. E. 830.....	1264
Wilkinson v. Stuart, 74 Ala. 198.....	1183, 1186, 1209, 1211
Wilkinson v. Tilden, 9 Fed. 683.....	1526
Wilkinson v. Washington Trust Co., 72 C. C. A. 140, 102 Fed. 28..	426
Wilks v. Vaughn (Ark.), 83 S. W. 913.....	1497, 1510, 1511
Willamette Iron Works v. Oregon R. & N. Co., 26 Or. 224, 46 Am. St. Rep. 620, 37 Pac. 1016, 29 L. R. A. 88.....	777
Willard v. Valley, The, 66 Fed. 565, 13 C. C. A. 635.....	446
Willard v. Comstock, 58 Wis. 565, 46 Am. Rep. 657, 17 N. W. 401	600, 611, 615, 631
Willard v. Tayloe, 8 Wall. 557, 19 L. ed. 501.....	1319
Willard v. Willard, 145 U. S. 116, 36 L. ed. 644, 12 Sup. Ct. 818	1194, 1207
Willard v. Wood, 164 U. S. 502, 524, 17 Sup. Ct. 176, 41 L. ed. 531	40
Willard v. Wood, 1 App. Cas. (D. C.) 44.....	1497
Willeford v. State, 43 Ark. 63.....	589
Willey v. Hodge, 104 Wis. 81, 76 Am. St. Rep. 852, 80 N. W. 75	1144, 1145
Willey v. St. Charles Hotel Co., 52 La. Ann. 1581, 28 South. 182	1401
Williams v. Boice, 38 N. J. Eq. 364.....	375
Williams v. Boynton, 147 N. Y. 426, 42 N. E. 184.....	596, 619
Williams v. Breitling Metal-Ware Mfg. Co., 77 Fed. 285, 23 C. C. A. 171	982
Williams v. Brooks, 50 Conn. 278, 47 Am. Rep. 642.....	991
Williams v. Carpenter, 14 Colo. 477, 24 Pac. 558.....	1264, 1265
Williams v. County Court, 26 W. Va. 488, 53 Am. Rep. 94...	747, 748
Williams v. Day, 2 Cas. in Ch. 32	812, 818
Williams v. Dismukes, 106 Ala. 402, 17 South. 620.....	201, 1410
Williams v. Dutton, 184 Ill. 608, 56 N. E. 868.....	678
Williams v. Earl of Jersey, Craig & P. 91	1086
Williams v. Farmers' Nat. Bank, 22 Tex. Civ. App. 581, 56 S. W. 261	1131
Williams v. Grant County Court, 26 W. Va. 488, 53 Am. Rep. 94	647
Williams v. Haddock, 145 N. Y. 144, 150, 39 N. E. 825...	1375, 1378
Williams v. Halbert, 7 B. Mon. 184	97
Williams v. Hamilton, 104 Iowa, 423, 65 Am. St. Rep. 475, note, 73 N. W. 1029	1140
Williams v. Harden, 1 Barb. Ch. 298	1087
Williams v. Harlan, 88 Md. 1, 71 Am. St. Rep. 394, 41 Atl. 51..	493
Williams v. Hintermeister, 26 Fed. 889	451
Williams v. Hitzie, 83 Ind. 303	1120
Williams v. Hogeboom, 8 Paige, 469	189

Williams v. Hubbard, Walk. Ch. (Mich.) 28.....	189
Williams v. Jenkins, 11 Ga. 595	153, 1209
Williams v. Jones, 10 Smedes & M. 108.....	1077
Williams v. Long, 129 Cal. 229, 61 Pac. 1087.....	843
Williams v. Lumpkin, 86 Tex. 641, 26 S. W. 493.....	1099
Williams v. Matthews, 47 N. J. Eq. 196, 20 Atl. 261.....	82, 83
Williams v. McKay, 40 N. J. Eq. 189, 53 Am. Rep. 775.....	375
Williams v. Michenor, 11 N. J. Eq. 520	1419, 1451
Williams v. Montgomery, 148 N. Y. 519, 43 N. E. 57.....	1267
Williams v. New York Cent. R. Co., 16 N. Y. 97, 69 Am. Dec. 651	771, 777
Williams v. Peabody, 8 Hun, 271	806
Williams v. Pile, 104 Tenn. 273, 56 S. W. 833.....	1098
Williams v. Prince of Wales Life etc. Co., 23 Beav. 340.....	488
Williams v. Reynolds, 7 Ind. 622, 625.....	1416
Williams v. Riehl, 127 Cal. 365, 59 Pac. 762, 78 Am. St. Rep. 60	1481
Williams v. Stewart, 56 Ga. 663	1073
Williams v. Tipton, 24 Tenn. (5 Humph.) 66, 42 Am. Dec. 420..	1442
Williams v. Tozer, 185 Pa. St. 302, 64 Am. St. Rep. 650.....	487
Williams v. Traphagen, 38 N. J. Eq. 57	369
Williams v. Van Tuyl, 2 Ohio St. 336.....	1182
Williams v. Walker, 2 Rich. Eq. 291, 46 Am. Dec. 53.....	97
Williams v. Williams, 7 Baxt. 116	1227
Williams v. Williams, 3 Mer. 157	489, 491, 1274
Williams v. Williams, 2 Swanst. 253	523
Williamson v. Dils, 24 Ky. Law Rep. 292, 72 S. W. 292.....	1338
Williamson v. Gerlach, 41 Ohio St. 682.....	185
Williamson v. Jones, 43 W. Va. 562, 64 Am. St. Rep. 891, 27 S. E. 411, 38 L. R. A. 694.....	803, 814, 818
Williamson v. Monroe, 3 Cal. 383	150
Williamson v. Monroe, 101 Fed. 322	36, 37, 40
Williamson v. New Albany etc. R. Co., 1 Biss. 206, Fed. Cas. No. 17,753	250, 251, 254
Williamson v. Wilson, 1 Bland (Md.), 418.....	113, 144, 145
Williman v. Holmes, 4 Rich. Eq. (S. C.) 476.....	1212
Willis v. Corlies, 2 Edw. Ch. 281	154
Willis v. Henderson, 5 Ill. 13, 38 Am. Dec. 120.....	1208
Willis v. Holland, 13 Tex. Civ. App. 689, 36 S. W. 329.....	1399
Willis v. Sweet, 49 Wis. 505, 5 N. W. 895.....	1227
Willis v. Wozencroft, 22 Cal. 608, 618.....	1389
Willitt v. Baker, 133 Fed. 937.....	1233
Willoughby v. Grisham, 3 Sneed, 237	1227
Willoughby v. Lawrence, 116 Ill. 11, 4 N. E. 356, 56 Am. Rep. 758	500, 517
Wills v. Luff, L. R. 38 Ch. D. 197	177
Wills v. Slade, 6 Ves. 498.....	1183, 1187, 1196, 1202, 1213
Wills v. Stradling, 3 Ves. 378.....	1349, 1350
Willson v. Salmon, 45 N. J. Eq. 257, 17 Atl. 815.....	66
Wilmarth v. Woodcock, 66 Mich. 331, 33 N. W. 400.....	859
Wilmer v. Atlanta & R. A. R. Co., 2 Woods, 409, Fed. Cas. No. 17,775	255, 326
Wilmington v. Addicks (Del. Ch.), 47 Atl. 366.....	917, 929
Wilmington Water Power Co. v. Evans, 166 Ill. 548, 46 N. E. 1083	767
Wilsey v. Callanan, 66 Hun, 629, 21 N. Y. Supp. 165.....	917

Wilson v. Addison, 127 Mich. 680, 8 Det. Leg. N. 575, 87 N. W. 109.....	1434
Wilson v. Alderman (S. C.), 48 S. E. 85.....	940
Wilson v. Atlantic & St. L. R. Co., 2 Fed. 459.....	1396
Wilson v. Auburn, 27 Neb. 435, 43 N. W. 257.....	716
Wilson v. Augur, 176 Ill. 561, 52 N. E. 289.....	53
Wilson v. Boise City, 7 Idaho, 69, 60 Pac. 84.....	676
Wilson v. Boughton, 50 Mo. 17.....	1109
Wilson v. Cohen, Rice Eq. (S. C.) 80.....	945
Wilson v. Consolidated Store Service Co., 88 Fed. 286, 31 C. C. A. 533.....	983
Wilson v. Coolidge, 42 Mich. 112, 3 N. W. 285.....	1076
Wilson v. Duncan, 11 Abb. Pr. 3.....	94, 95
Wilson v. Duncan, 44 Miss. 642.....	1216
Wilson v. Eagleson (Idaho), 71 Pac. 613.....	917
Wilson v. Featherstone, 120 N. C. 449, 27 S. E. 121.....	877
Wilson v. Fitcher, 11 N. J. Eq. 71.....	144
Wilson v. Furness Ry. Co., L. R. 9 Eq. 28.....	1277
Wilson v. Green, 63 Md. 547.....	1216
Wilson v. Green, 135 N. C. 343, 47 S. E. 469.....	725
Wilson v. Greenwood, 1 Swanst. 471.....	145, 280
Wilson v. Hart, 2 Hem. & M. 551, 11 Jur., N. S., 735, L. R. 1 Ch. 463.....	502, 506, 517
Wilson v. Hart, 98 Mo. 618, 12 S. W. 249.....	1173
Wilson v. Hawthorne, 14 Colo. 530, 20 Am. St. Rep. 290, 24 Pac. 548.....	1121
Wilson v. Hill, 46 N. J. Eq. 369, 19 Atl. 1097.....	834
Wilson v. Hooser, 76 Wis. 387, 45 N. W. 316.....	1249
Wilson v. Longendyke, 32 Kan. 267, 4 Pac. 361.....	696
Wilson v. Louisville Trust Co., 102 Ky. 522, 44 S. W. 121.....	56
Wilson v. Maddox, 46 W. Va. 641, 33 S. E. 775.....	117
Wilson v. Madison, 55 Cal. 5.....	1247
Wilson v. Mallett, 4 Sandf. 112.....	1517
Wilson v. Martin-Wilson etc. Fire Alarm Co., 149 Mass. 24, 20 N. E. 318, 151 Mass. 515, 24 N. E. 784, 8 L. R. A. 309....	28, 1414
Wilson v. Miller, 30 Md. 82, 96 Am. Dec. 568.....	1135
Wilson v. Mineral Point, 39 Wis. 160.....	822, 846
Wilson v. Northampton etc. Ry., L. R. 9 Ch. App. 279, 284.....	1256
Wilson v. Patton, 87 N. C. 318.....	1403
Wilson v. Philippi, 39 W. Va. 75, 19 S. E. 553.....	749
Wilson v. Riddle, 48 Ga. 609.....	1518
Wilson v. Salem, 24 Or. 504, 34 Pac. 9, 691.....	737
Wilson v. Shipman, 34 Neb. 573, 33 Am. St. Rep. 660, 52 N. W. 576.....	1120
Wilson v. Smith, 117 Fed. 707.....	40
Wilson v. Townsend, 1 Drew. & S. 324.....	964
Wilson v. Welsh, 157 Mass. 77, 31 N. E. 712.....	357, 441
Wilson v. Wiggins, 7 Okla. 517, 54 Pac. 716.....	730
Wilson v. Williams, 3 Jur., N. S., 810.....	1369
Wilson v. Wilson, 2 Kean, 249.....	161
Wilson v. Wilson, 41 Or. 459, 69 Pac. 923.....	41, 43
Wiltse v. Flack, 115 Iowa, 51, 87 N. W. 729.....	1435
Wimberley, Ex parte, 57 Miss. 437.....	591
Wimbish v. Montgomery Co., 69 Ala. 575, 578.....	1375
Wimer v. Wimer, 82 Va. 890, 3 Am. St. Rep. 126, 5 S. E. 536..	32
Wimpfheimer v. Perrine (N. J. Eq.), 50 Atl. 356.....	1441

Winamac v. Huddleston, 132 Ind. 217, 31 N. E. 561.....	624
Winchell v. Waukeshah, 110 Wis. 101, 84 Am. St. Rep. 902, 85 N. W. 668.....	915, 916, 929, 965
Winchester v. Davis Pyrites Co., 67 Fed. 45, 14 C. C. A. 300....	303
Winchester etc. Co. v. Gordon, 143 Ind. 681, 42 N. E. 914.....	118, 261, 274
Windecker v. Mut. L. Ins. Co., 12 App. Div. (N. Y.) 73, 43 N. Y. Supp. 358.....	71, 101
Windfall Mfg. Co. v. Patterson, 148 Ind. 414, 62 Am. St. Rep. 532, 47 N. E. 2, 37 L. R. A. 381.....	891
Windfall Natural Gas M. & O. Co. v. Terwilliger, 152 Ind. 364, 53 N. E. 284.....	858
Windle v. Barrow, 2 Jones Eq. 66.....	1216
Windman v. Vincennes, 58 Ind. 480.....	687
Windom v. Wolverton, 40 Minn. 439, 42 N. W. 295.....	1253
Windwart v. Allen, 13 Md. 196.....	1076
Wineman v. Fisher Electrical Works, 118 Mich. 636, 77 N. W. 245.....	202
Winfield v. Bacon, 24 Barb. 154.....	93
Winfield v. Henning, 21 N. J. Eq. 188.....	503
Winfield v. Winfield Water Co., 51 Kan. 70, 32 Pac. 663.....	1157
Winfield Bank v. Nipp, 47 Kan. 744, 28 Pac. 1015.....	695
Wing v. Sherrer, 77 Ill. 200.....	1229
Wing v. Spaulding, 64 Vt. 83, 23 Atl. 615.....	80, 81
Wingate v. Astoria, 39 Or. 603, 65 Pac. 982.....	736, 737
Wingate v. Hamilton, 7 Ind. 73.....	1369
Wingate v. Haywood, 40 N. H. 437.....	1091
Wingate v. Ketner, 8 Wash. 94, 35 Pac. 591.....	746
Winifrede Coal Co. v. Board of Education, 47 W. Va. 132, 34 S. E. 776.....	747, 748
Winkler v. Magdeburg, 100 Wis. 421, 76 N. W. 332.....	171
Winkler v. Winkler, 40 Ill. 179.....	798
Winn v. Albert, 2 Md. Ch. 42.....	1088
Winn v. Shaw, 87 Cal. 631, 636, 25 Pac. 968.....	609
Winn v. Strickland, 34 Fla. 630, 16 South. 606.....	31
Winne v. Reynolds, 6 Paige, 407, 413.....	1366
Winne v. Winne, 166 N. Y. 263, 82 Am. St. Rep. 647, 59 N. E. 832.....	1259
Winnett v. Adams (Neb.), 99 N. W. 681.....	587
Winship v. Pitts, 3 Paige, 259.....	804, 805
Winslow v. Baltimore & O. R. Co., 188 U. S. 646, 23 Sup. Ct. 443, 47 L. ed. 635.....	1350
Winslow v. Leland, 128 Ill. 304, 338, 21 N. E. 588.....	1427
Winslow v. Minnesota & P. R. Co., 4 Minn. 313, 77 Am. Dec. 519.....	1444
Winsor v. German Sav. & L. Soc., 31 Wash. 365, 72 Pac. 66.....	871
Winsor v. Savage, 9 Met. (Mass.) 346.....	1478
Winter v. Kansas City Cable Co., 160 Mo. 159, 61 S. W. 606.....	1164
Winton v. Sherman, 20 Iowa, 295.....	1333
Wirt v. Hicks, 46 Fed. 71, Ames, Cas. in Eq. Jur., 626..	975, 976, 982
Wisconsin Central R. Co. v. Ashland County, 81 Wis. 10, 50 N. W. 937.....	750, 755
Wisconsin Granite Co. v. Gerrity, 144 Ill. 77, 33 N. E. 31.....	1410, 1432, 1434
Wise v. Taylor, 44 W. Va. 492, 29 S. E. 1003.....	1420
Wiseley v. Findlay, 3 Rand. (Va.) 361, 15 Am. Dec. 712.....	1182
Wistar, Appeal of, 80 Pa. St. 484.....	1259

Wistar v. McManus, 54 Pa. St. 318, 93 Am. Dec. 700.....	1099
Wiswall v. Sampson, 14 How. 52, 14 L. ed. 322.....	
.....287, 302, 309, 310, 311, 312, 313, 315, 317, 319, 328	
Wiswell v. Starr, 48 Me. 401.....	282
Wiswell v. Wilkins, 4 Vt. 137.....	1522
Witherbee v. Witherbee, 17 App. Div. 181, 45 N. Y. Supp. 297..	356
Withers v. Carter, 4 Gratt. 407, 50 Am. Dec. 78.....	1420
Withers v. Jack, 79 Cal. 297, 12 Am. St. Rep. 143, 21 Pac. 824..	1248
Withers v. Thompson, 4 T. B. Mon. (Ky.) 335.....	1211
Withy v. Cottle, 1 Sim. & St. 174.....	1262, 1267
Witte v. Clarke, 17 S. C. 313.....	1400
W. J. Johnston Co. v. Hunt, 66 Hun, 504, 21 N. Y. Supp. 314, affirmed, 142 N. Y. 621, 37 N. E. 564.....	521
Wm. Rogers Co. v. International Silver Co., 118 Fed. 133, 55 C. C. A. 83.....	997
Woerishoffer v. North River Construction Co., 99 N. Y. 398, 2 N. E. 47	305, 306
Wofford v. Bailey, 57 Miss. 239.....	1244
Wofford v. Booker, 10 Tex. Civ. App. 171, 30 S. W. 67....	1118, 1133
Wolbert v. Harris, 7 N. J. Eq. 621.....	142, 145
Wolcott v. Ashenfelter, 5 N. Mex. 443, 23 Pac. 780, 8 L. R. A. 691.....	1424
Wolcott v. Jackson, 52 N. J. Eq. 387, 28 Atl. 1045.....	1124
Wolcott v. Melick, 11 N. J. Eq. 204, 66 Am. Dec. 790.....	862
Wolcott v. Robbins, 26 Conn. 236.....	1173, 1208
Wolf v. Great Falls etc. Co., 15 Mont. 49, 38 Pac. 115.....	41, 61
Wolf v. Smith, 36 Iowa, 454.....	1400
Wolf Brick Co. v. Lonyo, 132 Mich. 162, 102 Am. St. Rep. 412, 93 N. W. 251.....	829
Wolfe v. Claffin, 81 Ga. 64, 6 S. E. 599.....	200
Wolfe v. Scarborough, 2 Ohio St. 361	1173
Wolfe v. Titus, 124 Cal. 264, 56 Pac. 1042.....	1082
Wolfinger v. McFarland (N. J.), 54 Atl. 862.....	1287
Wollaston v. Tribe, L. R. 9 Eq. Cas. 44.....	41
Wollenberg v. Minard, 37 Or. 621, 62 Pac. 532.....	1410
Womack v. Powers, 50 Ala. 5.....	1075
Wolmershausen v. Gullick, [1893] 2 Ch. 514.....	1482, 1491, 1492
Wolters v. Hemingway, 114 Cal. 433, 46 Pac. 277.....	1483
Wolverhampton & W. R. Co. v. London & N. W. R. Co., L. R. 16 Eq. Cas. 433.....	1281
Womack v. Smith, 11 Humph. 478, 54 Am. Dec. 51.....	1264
Wombwell v. Belasyse, 6 Ves. (2d ed.) 110a, note.....	813
Women's Catholic Order of Foresters v. Haley, 86 Ill. App. 330.....	557
Wommack v. Whitmore, 58 Mo. 448.....	1194, 1198
Wong Wai v. Williamson, 103 Fed. 1.....	575
Wood v. Auburn, 87 Me. 287, 32 Atl. 906, 29 L. R. A. 376.....	532
Wood v. Carpenter, 101 U. S. 135, 139, 25 L. ed. 807....	36, 37, 54
Wood v. Clute, 1 Sandf. Ch. 200.....	1197
Wood v. Cooper, [1894] 3 Ch. 671.....	515
Wood v. Davis, 108 Fed. 130.....	1104
Wood v. Dummer, 3 Mason, 308, 311, Fed. Cas. No. 17,944....	
.....	1456, 1459, 1463
Wood v. Gaynon, Amb. 395.....	806
Wood v. Griffith, 1 Swanst. 43.....	1271
Wood v. Guarantee Tr. & S. Deposit Co., 128 U. S. 421, 9 Sup. Ct. 131, 32 L. ed. 472.....	421

Wood v. Hitchings, 2 Beav. 289.....	140
Wood v. Hubbard, 29 App. Div. 166, 51 N. Y. Supp. 526.....	1191
Wood v. Little, 35 Me. 107.....	1182, 1215
Wood v. McClelland (Tex. Civ. App.), 53 S. W. 381.....	1420
Wood v. McGrath, 150 Pa. St. 451, 24 Atl. 682, 16 L. R. A. 715..	881, 883
Wood v. Midgley, 5 De Gex, M. & G. 41.....	1362
Wood v. Missouri etc. R. R. Co., 11 Kan. 323.....	1246
Wood v. New York & N. E. R. Co., 70 Fed. 741....	414, 416, 417, 419
Wood v. Nicolson, 43 Kan. 461, 23 Pac. 587.....	1250
Wood v. Oregon Development Co., 55 Fed. 901.....	433
Wood v. Perkins, 64 Fed. 817, 57 Fed. 258.....	65, 46
Wood v. Rowcliffe, 3 Hare, 304 (affirmed 2 Ph. 382)....	482, 1266
Wood v. Seeley, 32 N. Y. 105.....	1227
Wood v. Sugg, 91 N. C. 93, 49 Am. Rep. 639.....	1194, 1195
Wood v. Sutcliffe, 2 Sim., N. S., 163.....	907, 966
Wood v. Victoria, 18 Tex. Civ. App. 573, 46 S. W. 284.....	611
Wood v. Warner, 15 N. J. Eq. 81.....	31
Woodbridge Tp. v. Raritan etc. Co., 64 N. J. Eq. 169, 53 Atl. 175.	923
Woodburn v. Smith, 96 Ga. 241, 22 S. E. 964.....	305, 307
Woodbury v. Allegheny & K. R. R. Co., 72 Fed. 371.....	30
Woodford v. Alexander, 35 Fla. 333, 17 South. 658.....	826, 846
Woodman v. Ely, 2 Fed. 839.....	656
Woodmanse & Hewitt Mfg. Co. v. Williams, 68 Fed. 489, 15 C. C. A. 520.....	981
Woodruff v. Fisher, 17 Barb. 224.....	1087
Woodruff v. Jewett, 115 N. Y. 267, 22 N. E. 156.....	352
Woodruff v. Johnston, 61 N. Y. Sup. Ct. 348, 19 N. Y. Supp. 861.	1103
Woodruff v. North Bloomfield etc. Co., 8 Saw. (U. S. C. C.) 628,	16 Fed. 25.....
Woodruff v. North Bloomfield etc. Co., 9 Saw. 441, 18 Fed. 753	875
Woodruff v. Perry, 103 Cal. 611, 37 Pac. 526.....	926, 929
Woodruff v. Wallace, 3 Okla. 355, 41 Pac. 357.....	669
Woodruff v. Welton (Neb.), 97 N. W. 1037.....	851
Woods v. Early, 95 Va. 307, 28 S. E. 374.....	626
Woods v. Ellis, 85 Va. 471, 7 S. E. 852.....	803, 817
Woods v. Grayson, 16 App. D. C. 174.....	298
Woods v. Greensboro etc. Co. (Pa.), 54 Atl. 470.....	108
Woods v. McGraw (C. C. A.), 127 Fed. 914, 63 C. C. A. 556.	1328, 1334
Woods v. Monroe, 17 Mich. 238.....	1087
Woods v. Riley, 72 Miss. 73, 18 South. 384.....	811, 843
Woods v. Stevenson, 43 W. Va. 149, 27 S. E. 309.....	1348
Woodstock Iron Co. v. Fullenwider, 87 Ala. 584, 13 Am. St. Rep.	73, 6 South. 197.....
Woodward v. Lazar, 21 Cal. 448, 82 Am. Dec. 751.....	1233
Woodward v. Pike, 43 Neb. 777, 62 N. W. 230.....	990
Woodward v. Winehill, 14 Wash. 394, 44 Pac. 860.....	1124
Woodward v. Woodward, 17 Ky. Law Rep. 464, 31 S. W. 734....	182, 291
Woodworth v. Brooklyn El. R. Co., 29 App. Div. 1, 51 N. Y. Supp.	107
Woodworth v. Campbell, 5 Paige, 518.....	323.....
Woodworth v. Schaefer, 57 Md. 1, 40 Am. Rep. 419	778
Woodyear v. Schaefer, 57 Md. 1, 40 Am. Rep. 419	1194, 1202
Woolaston v. Wright, 3 Anstr. 801.....	875
Wooldridge v. Scott, 69 Mo. 669.....	90
	1362

Woollen v. Hillen, 9 Gill, 185, 52 Am. Dec. 690.....	1402
Wooley v. Holt, 14 Bush, 788.....	167
Woolsey v. Judd, 4 Duer, 379.....	989
Woolsey v. New York El. R. Co., 134 N. Y. 323, 30 N. E. 387; affirmed on rehearing, 31 N. E. 891.....	781
Woolums v. Horsley, 93 Ky. 582, 20 S. W. 781.....	1307
Woolworth v. Insurance Co., 49 N. Y. Supp. 512, 25 App. Div. 629.	92
Wooters v. City of Crockett, 11 Tex. Civ. App. 474, 33 S. W. 391.	786
Worch v. Woodruff, 61 N. J. Eq. 78, 47 Atl. 725.....	1333
Word v. Word, 90 Ala. 81, 7 South. 412.....	148, 150
Worden v. California Fig Syrup Co., 187 U. S. 516, 23 Sup. Ct. 161, 47 L. ed. 282.....	1000, 1001
Worden v. Pruter (Tex. Civ. App.), 88 S. W. 434.....	295
Workman v. Guthrie, 29 Pa. St. 495, 72 Am. Dec. 654.....	1349
World Bldg. etc. Co. v. Marlin, 151 Ind. 630, 52 N. E. 198.....	179
World's Columbian Exposition v. United States, 56 Fed. 654, 6 C. C. A. 58, 18 U. S. App. 42.....	535
Wormington v. Pierce, 22 Or. 606, 30 Pac. 450.....	624
Wormley v. Wormley, 207 Ill. 411, 69 N. E. 865.....	828
Wormser v. Brown, 149 N. Y. 163, 43 N. E. 524.....	945, 952
Worth v. Patton, 5 Ind. App. 272, 31 N. E. 1130.....	1356
Worth v. Wharton, 122 N. C. 376, 29 S. E. 370.....	356, 362, 364
Worthen v. Badgett, 32 Ark. 496.....	667
Worthen v. Griffith, 59 Ark. 577, 43 Am. St. Rep. 58, 28 S. W. 286.....	1468, 1471
Worthington v. Beatty, 40 Fed. 479.....	986
Worthington v. Craddock, 3 Bland, 514, note.....	1401
Worthington v. Miller, 134 Ala. 420, 32 South. 748.....	1233
Worthington v. Moon, 53 N. J. Eq. 46, 30 Atl. 251.....	821
Worthington v. Waring (1892), 157 Mass. 421, 34 Am. St. Rep. 294, 32 N. E. 744, 20 L. R. A. 342.....	1034
Wotherspoon v. Currie, L. R. 5 H. L. (Eng. & Ir. App. Cas.) 508..	990
Wotten v. Copeland, 7 Johns. Ch. 140.....	1182, 1195, 1202
Wray v. Hutchinson, 2 Mylne & K. 235, 238.....	1528
Wreford v. Detroit, 132 Mich. 348, 93 N. W. 876.....	706
Wright v. Bell, 5 Price, 325, 328, 329.....	1256, 1267
Wright v. Bishop, 88 Ill. 302.....	601, 609, 622
Wright v. Fleming, 76 N. Y. 517.....	1083
Wright v. Judge, 41 Mich. 726, 49 N. W. 925.....	1106
Wright v. Marsh, 2 G. Greene (Iowa), 104.....	1184, 1215
Wright v. Miller, 8 N. Y. 9, 59 Am. Dec. 438.....	1097
Wright v. Moore, 38 Ala. 593, 82 Am. Dec. 731.....	968
Wright v. New York El. R. Co., 78 Hun, 450, 29 N. Y. Supp. 223.	781
Wright v. Nostrand, 94 N. Y. 32, 33.....	365, 376
Wright v. People, 31 Colo. 461, 73 Pac. 869.....	602
Wright v. Raftree, 181 Ill. 464, 54 N. E. 998.....	1351, 1353
Wright v. Ross, 30 Tex. Civ. App. 207, 70 S. W. 234.....	1529
Wright v. Smith, 13 App. Div. 536, 43 N. Y. Supp. 728.....	1102
Wright v. S. W. R. Co., 64 Ga. 783.....	675
Wright v. Ward, 4 Russ. 215.....	70, 89
Wright v. Wright, 99 Mich. 170, 58 N. W. 54, 23 L. R. A. 196...	1358
Wright v. Wright, 59 How. Pr. 176.....	1522, 1523
Wright v. Young, 6 Wis. 127, 70 Am. Dec. 453.....	1369
Wright-Blodget Co. v. Astoria Co. (Or.), 77 Pac. 599.....	1333
Wullenwaber v. Dunigan, 30 Neb. 877, 47 N. W. 420, 13 L. R. A. 811.....	623

Wyandotte v. K. C. Bridge Co. v. Board of Commissioners, 10	
Kan. 326.....	694, 695
Wyckoff v. Scofield, 98 N. Y. 475.....	181
Wyckoff v. Victor S. M. Co., 43 Mich. 309, 4 N. W. 405.....	1090
Wyckoff v. Wagner Typewriter Co., 88 Fed. 515.....	975
Wyeth Hardware Co. v. Lang, 54 Mo. App. 147.....	1126
Wykes v. Ringleberg, 49 Mich. 567, 14 N. W. 498.....	1173
Wyland v. Mendel, 78 Iowa, 739, 37 N. W. 160.....	1254
Wylie v. Charlton, 43 Neb. 840, 62 N. W. 220.....	1360
Wyman v. Bowman, 127 Fed. 276, 62 C. C. A. 189.....	1459, 1466
Wyman v. Fort Dearborn Nat. Bank, 181 Ill. 279, 72 Am. St. Rep. 259, 54 N. E. 946, 48 L. R. A. 565.....	1398
Wyman v. Eaton, 107 Iowa, 217, 70 Am. St. Rep. 193, 77 N. W. 865, 43 L. R. A. 695.....	440
Wyman v. Kimberly Clark Co., 93 Wis. 554, 67 N. W. 932.....	440
Wyman v. Mathews, 53 Fed. 678.....	1430
Wyman v. Williams, 52 Neb. 833, 73 N. W. 285.....	355
Wynn v. Morgan, 7 Ves. 203.....	1329, 1337
Wynne v. Tunstall, 1 Dev. Eq. 23.....	1210
Wynstanley v. Lee, 2 Swanst. 333, 335.....	919

X

Xenia Real Estate Co. v. Macy, 147 Ind. 568, 47 N. E. 147....	
.....	498, 532, 820

Y

Yancey v. Downer, 15 Ky. (5 Litt.) 8, 15 Am. Dec. 35....	1109, 1124
Yarborough v. Thompson, 3 Smedes & M. (Miss.) 291, 41 Am. Dec. 626.....	67, 69, 70, 1075
Yard v. Ocean Beach Assn., 49 N. J. Eq. 306, 24 Atl. 729....	1246
Yardley v. Clothier, 49 Fed. 341.....	367, 370, 371
Yardley v. Clothier, 2 C. C. A. 349, 51 Fed. 506, 17 L. R. A. 462..	371
Yates v. Jack, L. R. 1 Ch. App. 295.....	940, 945, 957
Yates v. Milwaukee, 10 Wall. 479, 19 L. ed. 984.....	836
Yates v. Milwaukee, 92 Wis. 352, 66 N. W. 248.....	758
Yates v. Tisdale, 3 Edw. Ch. 71.....	69, 70, 74, 81
Yazoo & M. V. R. Co. v. Adams, 73 Miss. 648, 19 South. 91....	709
Yeager v. Manning, 183 Ill. 275, 55 N. E. 691.....	940
Yeager v. Wallace, 44 Pa. St. 294.....	357
Yeiser v. Cathers (Neb.), 97 N. W. 840.....	308
Yglesias v. Dewey, 60 N. J. Eq. 62, 47 Atl. 59.....	1195
Yoakum v. Selph, 83 Tex. 607, 19 S. W. 145.....	412
Yocum v. First Nat. Bank (Ind.), 38 N. E. 599.....	686
Yocum v. First Nat. Bank, 144 Ind. 272, 43 N. E. 231....	688, 689
Yore v. Superior Court, 108 Cal. 431, 41 Pac. 477.....	237
York v. Davidson, 39 Or. 81, 65 Pac. 819.....	915
York v. Yzaguirre, 31 Tex. Civ. App. 46, 71 S. W. 563.....	792
York etc. Ferry Co. v. Jersey Co., Hopk. Ch. 460.....	1399, 1401
Young, In re, 7 Fed. 855.....	343
Young v. Bankier Distillery Co., [1893] L. R. App. Cas. 691..	906, 966
Young v. Bullen, 19 Ky. Law Rep. 1561, 43 S. W. 687.....	1419
Young v. Burton, 1 McMull. Eq. 255.....	1264

Young v. Clapp, 147 Ill. 176, 32 N. E. 187, 35 N. E. 372.....	376, 377
Young v. Cooper, 3 Johns. Ch. 295.....	1215
Young v. First Nat. Bank, 4 Idaho, 323, 392, 39 Pac. 557.....	1133
Young v. Frost, 1 Md. 377, 403.....	17, 1215
Young v. Hatch, 30 Colo. 422, 70 Pac. 693.....	1225
Young v. Montgomery R. R. Co., 2 Woods, 618, Fed. Cas. No. 18,166.....	452
Young v. Overbaugh, 145 N. Y. 158, 39 N. E. 712.....	1360
Young v. Paul, 10 N. J. Eq. 401, 64 Am. Dec. 456.....	1370
Young v. Reynell, 9 Hare, 809.....	1482
Young v. Rollins, 90 N. C. 125, 131.....	300
Young v. Rutan, 69 Ill. App. 513.....	207, 215
Young v. Shunk, 30 Minn. 503, 16 N. W. 402.....	1489
Young v. Young, 20 Ky. Law Rep. 1741, 49 S. W. 1074.....	1191
Young v. Young, 45 N. J. Eq. 27, 16 Atl. 921, 1259, 1380, 1381, 1384	
Young v. Young, 51 N. J. Eq. 491, 27 Atl. 627.....	45, 1384
Young v. Wright, 4 Wis. 163, 65 Am. Dec. 303.....	1312, 1315, 1318
Youngblood v. Sexton, 32 Mich. 408, 20 Am. Rep. 654.....	705, 706
Younger v. Massey, 41 S. C. 50, 19 S. E. 125.....	1445
Youngs v. Klunder, 27 N. Y. St. Rep. 32, 7 N. Y. Supp. 498....	299
Yovatt v. Winyard, 1 Jacob & W. 394.....	489, 490
Yuba v. Cloke, 79 Cal. 239, 21 Pac. 740.....	889, 927

Z

Zabriskie v. Cleveland etc. R. Co., 23 How. (64 U. S.) 381, 16 L. ed. 488.....	542
Zacher v. Fidelity Trust etc. Co., 106 Fed. 593, 45 C. C. A. 480, 443	445
Zacher v. Fidelity Trust etc. Co., 109 Ky. 441, 59 S. W. 493....	445
Zane v. Weintz, 65 N. J. Eq. 214, 55 Atl. 641.....	1324
Zanhizer v. Hefner, 47 W. Va. 418, 35 S. E. 4.....	1131
Zantierjian v. Boornazian (R. I.), 55 Atl. 199.....	526
Zebley v. Sears, 38 Iowa, 507.....	1370
Zecharie v. Bowers, 9 Miss. (1 Smedes & M.) 584, 40 Am. Dec. 111....	1427
Zehnder v. Barber Asphalt Co., 106 Fed. 103.....	664
Zeigler v. Long, 2 Watts, 205.....	1399
Zeimatz v. Blake (Wash.), 80 Pac. 822, 823.....	1334, 1340, 1343
Zellerbach v. Allenberg, 67 Cal. 296, 7 Pac. 908.....	1092
Zeltner v. Zeltner Brewing Co., 174 N. Y. 247, 95 Am. St. Rep. 574, 66 N. E. 810.....	245
Ziegler v. Chapin, 126 N. Y. 342, 27 N. E. 471.....	620
Ziegler v. Grim, 6 Watts, 106.....	1186
Ziegler v. Long, 2 Watts, 205.....	1401
Zieverink v. Kemper, 50 Ohio St. 208, 34 N. E. 250.....	228
Zimmerman v. Chambers, 79 Wis. 20, 47 N. W. 947.....	1526, 1527
Zimmerman v. Gerzog, 13 App. Div. 210, 43 N. Y. Supp. 339. 524, 536	
Zimmerman v. Makepeace, 152 Ind. 199, 52 N. E. 992.....	1132
Zimmerman v. Savage, 145 Ind. 124, 44 N. E. 252.....	691
Zinn v. Dawson, 47 W. Va. 45, 81 Am. St. Rep. 772, 34 S. E. 784. 1087	
Zipp v. Barker, 55 N. Y. Supp. 246.....	509
Zook v. Pennsylvania R. Co., 206 Pa. St. 603, 56 Atl. 82.....	872
Zuellig v. Hemerlie, 60 Ohio St. 27, 71 Am. St. Rep. 707, 53 N. E. 447.....	1509

INDEX.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

A

ACCIDENT,

equitable relief against accident in action at law, 658.

ACCOUNTING, suits for an, 926-935.

classification of the remedy, 11.

complicated accounts, 930.

co-tenants, accounting between, 933.

defenses; plea of account stated a bar, 928.

discovery, necessary when, 934.

equitable jurisdiction,

origin, 926.

when exercised, 927.

fiduciary relations, 931.

inadequacy of legal remedy, 927.

incidental to other relief, 935.

injunction with accounting, infringement suits, 568.

joint tenants, accounting between, 933.

mutual accounts, 929.

origin of equitable jurisdiction, 926.

partition, accounting as incidental relief, 720.

partnership suits for accounting, 937, 939.

part owners, accounting between, 933.

plea of account stated a bar, 928.

principal and agent, 932.

profit sharers, accounting between, 933.

relief often similar to specific performance, 9.

tenants in common, accounting between, 933.

ACQUIESCENCE,

injunctions against eminent domain, 472.

injunctions against nuisance, 537.

injunctions against trespass, 511.

See, also, Laches.

ACTIONS,

receiver, actions against, 171-179.

receivers, actions by, 180-191.

See, also, Receivers.

(1811)

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

ACTIONS AT LAW,

injunctions against proceedings at law, 637-674.

See Injunctions.

interpleader, statutory remedy by motion in, 61.

ADEQUATE REMEDY AT LAW. See Inadequacy of Legal Remedy.**AFFIDAVIT,**

of non-collusion in interpleader suits, 59.

ADMINISTRATION OF ESTATES. See Executors and Administrators.**ADMINISTRATORS.** See Executors and Administrators.**AGENCY.** See Principal and Agent.**AGREEMENTS,** injunction to protect, 270-300.

See Injunctions.

ALABAMA,

injunctions, statutory regulations, 262, note.

receiver for unsecured creditors, 112, note.

receivership statutes, 73, note.

statutory vesting title by decree, 13, note.

taxation, injunction to restrain, 379.

ALIMONY AND MAINTENANCE,

receiver appointed, 133.

ANCILLARY RECEIVERS, 258-261.**ANCILLARY RELIEF.** See Incidental Relief.**APPEAL,**

receivers, right of receiver to appeal, 173.

APPOINTMENT OF RECEIVER. See Receivers.**ARBITRATION AGREEMENTS,**

specific performance denied, 753.

ARIZONA,

injunctions, statutory, 262, note.

receivership statutes, 73, note.

statutory vesting title by decree, 13, note.

taxation, injunction to restrain, 380.

ARKANSAS,

injunctions, statutory regulations, 262, note.

special assessments, injunctions against, 382.

statutory vesting legal title by decree, 13, note.

taxation, injunctions against, 381.

ARREST,

receiver, immunity from arrest, 169.

ASSESSMENTS, SPECIAL. See Taxation, Special Assessments.**ASSIGNEE FOR BENEFIT OF CREDITORS,**

receivership not denied mortgagee, 99.

ASSIGNEE OF THINGS IN ACTION,

classification of remedies of, 11.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

ASSIGNMENT FOR BENEFIT OF CREDITORS,

receiver appointed to replace assignee when, 90.

ASSIGNMENT OF DOWER, 689-693.

concurrent jurisdiction of law and equity, 691.

exclusive jurisdiction over equitable estates, 692.

legal remedies, 689.

origin and grounds of equity jurisdiction, 690.

ATTACHMENT,

creditors' bill, whether sufficient to support, 885.

enforcement of decree by, 12, 14.

receiver appointed when, 112, note.

receivers, attachment against, 165.

receivers, attachment against foreign receiver, 251-254.

receivership does not affect lien, 156.

ATTORNEYS,

receivers, right of receiver to employ attorneys, 206.

AWARDS,

specific performance to enforce award, 754.

B

BALANCE OF INJURY,

injunctions against trespass, 508.

injunctions against nuisance, 529-531, and notes.

injunctions to protect easements, 552.

BANKRUPTCY,

receivers, effect of bankruptcy on receiver's compensation, 242.

receiver in bankruptcy proceedings, 132.

BILLS OF PEACE, generally, 723.

classification, 7.

BILLS QUIA TIMET, generally, 723.

classified, 7, 8.

BILLS TO QUIET TITLE. See Quieting Title.

BILL TO REMOVE CLOUD ON TITLE. See Cloud on Title.

BLACKLISTING,

injunctions against, 610.

BONDS,

municipal, taxpayers' injunction, 349.

BOUNDARIES,

establishment in equity of disputed boundary, 694-700.

equity has not exclusive jurisdiction, 6.

fraud as ground for relief, 695.

grounds for relief, 695-698.

multiplicity of suits as ground for relief, 696.

nature of relief, 700.

relationship between parties as ground for relief, 697.

requisites of bill, 699.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

BOYCOTTS, STRIKES AND COMBINATIONS, injunctions against, 585-628.

C

CALIFORNIA,

- injunctions, statutory regulations, 262, note.
- interpleader in legal action, 61.
- receivers, alimony suits, 133.
- receivers for corporations, statutes, 127, note.
- receiver on foreclosure, mortgagee precluded by purchase, 98.
- receivership statutes, 73, note.
- special assessments, injunctions against, 384.
- taxation, injunctions against, 383.

CANCELLATION, 684-688.

- adequacy of legal remedy, effect, 685.
- auxiliary to ultimate relief, 4.
- equitable estate, owner may maintain, 4.
- estates established and protected by, 4.
- failure of consideration of conveyance, relief, 686.
- indirectly remedial, 4.
- interests established and protected by, 4.
- lashes as affecting relief, 687.
- legal estate owner may maintain, 4.
- object of the remedy, 4.
- protection afforded by the remedy, 4.
- ratification as affecting relief, 687.
- restoration of consideration a prerequisite, 688.
- receivership in cancellation suits, 87.
- support deeds, rescission of, 686.

CARRIERS,

- injunction to enforce obligation of common carrier, 633.

CERTIFICATES ISSUED BY RECEIVERS, 214-216.

CHÂTTELS,

- delivery up of specific chattels. See *Specific Performance*.

CHATTEL MORTGAGES,

- injunctions pertaining to chattel mortgages, 320.
- receiver only appointed on foreclosure, 104.

CHOSSES IN ACTION,

- creditors' bill, choses in action, whether embraced, 877, and notes.
- specific performance of contracts concerning, 750.

CLAIMS AND ALLOWANCES OF RECEIVERS, 218-245. See *Receivers*.

CLOUD ON TITLE,

- definition of cloud on title, 724.
- adequacy of legal remedy, 728.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

CLOUD ON TITLE,—*Continued.*

- bills to quiet title distinguished, 725.
- chattels, cloud on title to, 729.
- injunction against threatened, 726.
- suits to remove, 724-734.
 - classification of the remedy, 8.
 - decree operates only *in personam*, 12.
 - instrument constituting cloud, 727, and notes.
 - instrument invalid on its face, 733, 734.
 - personal property, 729.
 - plaintiff's title, 730.
 - possession of plaintiff, 731, 732.
- taxation, injunction for cloud on title, 362.

COLORADO,

- injunctions, statutory regulations, 262, note.
- receivership statutes, 73, note.
- special assessments, injunctions against, 386.
- taxation, injunctions against, 385.

COMBINATIONS, STRIKES AND BOYCOTTS, injunctions against, 585-628. See Injunctions.

COMMERCE. See Interstate Commerce.

COMITY,

- right of foreign receiver to sue, depending on, 250, 255, 256.

COMMISSIONER,

- statutory transfer of legal title by commissioner's deed, 13.

COMMON FUND,

- remedies of participants,
 - classification of remedies, 11.

COMPENSATION OF RECEIVERS, 238-243. See Receivers.

CONCURRENT JURISDICTION. See Jurisdiction.

CONFLICTING APPOINTMENTS of receivers, 170.

CONNECTICUT,

- injunctions, statutory regulations, 262, note.
- receivership statutes, 73, note.
- statutory vesting title by decree, 13, note.
- taxation, injunctions against, 387.

CONSPIRACY,

- combination enjoined as conspiracy, 617.

CONTEMPT,

- punishment to enforce decrees of federal courts, 14.
- receiver, interference with, is a, 154.
 - interference with receiver's possession, 163.
 - libel on receiver's business, 169.
 - suit against receiver without leave, 171.
 - refusal to deliver possession to receiver, 161, note.

[Vol. I, §§ 1-542; Vol. II, §§ 543-948.]

CONTRIBUTION, 915-918.

- classification of the remedy, 11.
- conditions of recovery, 917.
- doctrine, statement of, 915.
- equitable jurisdiction, 915.
- incidents of right of recovery, 918.
- parties entitled to contribution, 916.
- recovery, amount of, 918.
- recovery, conditions of, 917.

CONTRACTS,

- breach, injunction to prevent, 270-300.
 - See Injunction (contracts).
- cancellation of. See Cancellation.
- employment contracts, interference enjoined, 585-628.
 - See Injunction (combinations, strikes, etc.).
- equitable estates under contract to convey land, 839-846.
 - See Equitable Estates.
- executory, receiver's right to complete, 202.
- injunctions against interference, 585-628.
 - See Injunction, (combinations, strikes, etc.).
- receivers, right of receiver to contract, 204.
- rescission of. See Cancellation.
- specific performance, 744-837.
 - See Specific Performance of Contracts.

CONVERSION,

- equitable conversion, 838.

COPYRIGHTS,

- injunctions to protect copyrights, 574, 575.

CORPORATE STOCK,

- suits to compel transfer, 864.

CORPORATIONS,

- creditors' suits against stockholders. See Creditors' Suits.
- directors enjoined by stockholders from misdealing, 305.
- existence cannot be challenged by injunction, 308.
- injunctions against, 301-308.
 - See Injunctions.
- insolvency, creditors represented by receiver, 190.
- municipal. See Municipal Corporations.
- non-stock corporations. See Voluntary Associations.
- officers, remedies to enforce obligations of, classified, 9.
- officers, title to office not tried by injunction, 307.
- officers. See, also, Directors, *supra*.
- property, misdealing of directors, injunction, 305.
- public service corporations, injunction to enforce obligations, 633.
- quo warranto* no bar to attorney-general's injunction, 302.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

CORPORATIONS,—Continued.

- receivers, 116-128. See, also, Receivers.
- remedies to enforce obligations of, classified, 9.
- set-off by stockholder in receiver's action, 189.
- stock, specific performance of stock agreements, 752.
- stock, suits to compel transfer, 864.
- stockholders' suits to enjoin corporation, 302, 306.
- stockholders may enjoin directors' misdealing, 305.
- stockholders' suits to enjoin *ultra vires* acts, 303.
- transfer of stock, suits to compel, 864.
- ultra vires* acts enjoined, 301-304.
- voluntary associations. See Voluntary Associations.

COSTS,

- interpleader, costs in, 59.
- receivers, payment of costs when fund inadequate, 244.

CO-TENANCY,

- receivers in suits between co-owners, 86.
- See, also, Partition; Accounting.

COUNTIES,

- injunction to prevent removal of county seat, 352.
- See, also, Municipal Corporations.

COVERTURE,

- laches excused by coverture, 31.

CREDITORS' SUITS, 871-895.

- adequacy of legal remedy, 872-874.
- against stockholders. See Stockholders, *infra*, this title.
- assets not subject to execution, how reached, 886.
- attachment lien, sufficiency to support bill, 885.
- choses in action, 877, and notes.
- contingent interests, 878.
- corporations,
 - stockholders, creditors' suits against. See Stockholders, this title.
- discovery of assets, 875.
- equitable interests, 879.
- execution, sufficiency of return, 888.
- fraudulent conveyances, legal remedy inadequate, 873, 874.
- fraudulent obstructions to execution, how removed, 887.
- fraudulent transfers of chattels set aside, 880.
- intangible property, 876.
- judgment at law,
 - necessity for, 882.
 - statutes changing the rule, 882.
 - when judgment is sufficient, 883.
 - when judgment may be dispensed with, 884.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

CREDITORS' SUITS,—Continued.

- lashes, 889.
- lien of attachment, sufficiency to support bill, 885.
- lien of bill accrues when, 895.
- limitations, statute of, 889.
- money in *custodia legis* cannot be reached, 881.
- parties, defendant, 891.
 - joinder of parties plaintiff, 892.
 - one creditor suing for himself obtains priority, 893.
 - exception, in case of trust for all creditors, 894.
 - one creditor suing in behalf of others, 892.
 - plaintiff, who may sue, 890.
- priority of creditor suing for himself, 893.
 - exception in case of trust for all creditors, 894.
- property which may be reached, 876-880.
- property which cannot be reached, 881.
- receivers in. See Receivers.
- return of execution, sufficiency, 888.
- statutes,
 - judgment at law waived by statute, 882.
- stockholders, creditors' suits against, 896-910.
 - calls as affecting subscription liability, 902-905.
 - classification of bills against stockholders, 902-908.
 - conveyance of corporate assets in fraud of creditors, 907.
 - dissolution of corporation, directors as trustees, 908.
 - fraud or misrepresentation theory, 898.
 - suggested modification, 899.
 - garnishment liability no bar, 903.
 - money subscriptions reached, 902-905.
 - partnership analogy theory, 900.
 - pleading and practice, 909.
 - public policy theory, 901.
 - statutory liability in equity, 910.
 - subscriptions reached, 902-906.
 - theories on stockholders' liability, 896-901.
 - trust fund theory, 896-897.
 - underpaid stock issued as fully paid, 905.
 - undervalued property paid on subscription, 906.
- supplementary proceedings, effect on creditors' suits, 872.
- trust or *quasi* trust for creditors,
 - priority of single suitor defeated, 894.

CRIMES,

- injunctions to prevent or restrain crimes, 476, 477.
- injunction to restrain libel, 481.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

CRIMINAL PROCEEDINGS,

injunctions against, denied, 644.

D

DAMAGES,

contracts, damages in equity instead of specific performance, 837.

equitable suits for, classified, 11.

injunction with damages, infringement suits, 568.

DEATH OF PARTNER, receivership, 84.

DECEDENT'S ESTATE,

receiver for decedent's estate, 76.

DECREES,

act *in personam* only, 12.

statutory exceptions, 13, 15, and note.

alternative, damages or injunction in eminent domain, 473.

effect of a decree, 1.

injunctions against equitable decree, 642.

in partition did not pass title, 12.

in rem based on service by publication, 15, and note.

of federal courts do not transfer title, 14.

of a state court cannot affect property in another state, 14.

DEFINITIONS,

cloud on title, 724.

equitable waste, 489.

irreparable injury, 495.

lashes, 21.

receiver, 62.

remedies *in personam*, 12.

remedies *in rem*, 12.

trespass, as used in equity, 493.

See Remedies, Classification of.

DELAWARE,

injunctions, statutory regulations, 262, note.

receivership statutes, 73, note.

statutory vesting title by decree, 13, note.

taxation, injunctions against, 388.

DELIVERY UP OF SPECIFIC CHATTELS. See Specific Performance, Chattels.

DIRECTORS. See Corporations.

DISCHARGE OF INSTRUMENTS. See Cancellation.

DISCHARGE OF RECEIVERS, 247.

DISCOVERY,

accounting suits, discovery necessary when, 934.

creditors' suits, discovery of assets in, 875.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

DISPUTED BOUNDARIES,

establishment in equity, 694-700.

See Boundaries.

DISSEISIN,

partition as affected by disseisin, 710, 711.

DISSOLUTION OF PARTNERSHIPS, suits for, 936, **943-945.**

See, also, Receivers; Partnership Bills.

DISTRESS,

receiver, immunity of property from distraint, 169.

DOWER, assignment of. See Assignment of Dower, **689-693.**

equity jurisdiction almost exclusive, 6.

DOWER,

contracts to buy or sell equitable interests, effect on dower, **849.**

E**EASEMENTS,**

equitable easements protected by injunction, 272.

See Injunctions (covenants, restrictive).

injunctions to protect easements, 543-560.

absolute right of plaintiff, 553.

balance of injury, 552.

damage a prerequisite for injunction, 548.

grounds of equitable jurisdiction, 544.

inadequacy of legal remedy, 546.

jurisdiction of equity, nature and extent, **543-546.**

multiplicity of suits as ground, 545.

previous trial at law not a prerequisite, 549.

threatened injury, nature of injury, 551.

threatened injury, nature of threat, 550.

ELECTRIC CURRENTS,

injunction to protect, 635.

ELEVATED RAILROADS,

eminent domain, streets, New York rule, 470.

ELECTIONS,

injunction to restrain elections, 331, 332.

EMINENT DOMAIN,

acquiescence, effect on injunction, 472.

alternative decree, damages or injunction, 473.

compensation, failure to make, trespass, injunction, **499.**

damages or injunction, alternative injunction, 473.

injunctions against exercise of the power, 465-473.

acquiescence, 472.

alternative decree, damages or injunction, 473.

damages or injunction, alternative decree, 473.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

EMINENT DOMAIN,—*Continued.*

- general principles, 465.
- highways, railroads in, 467-470.
- police power distinguished, 465, note.
- proceedings never enjoined, 466.
- railroads in streets and highways, 467-470.
- streets, changing grade, 471.
- streets, vacating, 471.
- streets and highways, railroads in, 467-470.
- highways, railroads, injunctions, 467-470.
- police power distinguished, 465, note.
- proceedings never enjoined, 466.
- railroads in streets and highways, injunctions, 467-470.
- streets, changing grade, injunction, 471.
- streets, railroads, injunctions, 467-470.
- streets, vacating, injunction, 471.
- trespass enjoined, failure to compensate, 499.

ENFORCEMENT OF DECREES,

in personam, 12.

not affected by statutory power to relieve *in rem*, 14.

ENFORCEMENT OF LIENS. See *Liens*.

ENGLAND,

receivership statutes, 72.

EQUITABLE ASSIGNEES OF A FUND,

classification of remedies of, 11.

EQUITABLE CONVERSION, the doctrine of, 333.

EQUITABLE EASEMENTS protected by injunction, 372.

See *Injunctions* (covenants, restrictive).

EQUITABLE ESTATES AND INTERESTS,

creditor's suits reaching equitable interests, 379.

injunction to protect, 266-269.

EQUITABLE ESTATES UNDER CONTRACTS TO BUY AND SELL

LAND, 838-846.

assignment of purchase price notes transfers security, 854.

assignee of vendee,

rights of, 850.

specific performance against, refused, 851, 853.

assignees, rights of, 850.

conditions unperformed, effect, 845.

contract for devise of land, 847.

deterioration, vendor's liability as trustee, 852.

devise of land, contract for, 847.

devisee of vendee, rights of, 840.

equitable conversion, 838.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

EQUITABLE ESTATES UNDER CONTRACTS TO BUY AND SELL LAND,—Continued.

- dower interests under the contract, 849.
- fire, loss on vendee, 859.
- foreclosure of vendee's equity of specific performance, 862.
- grantee of vendor, specific performance against, 852, 853.
- heir of vendee, rights of, 840.
- inherited rights from contracting parties, 839-848.
- insurance money, vendee usually entitled to, 860.
- loss by accident or fire, vendee's loss, 859.
- loss by occurrence of contingency, on vendee, 861.
- option to purchase, exercised after vendor's death, 846.
- purchase price notes, transfer of security by assignment, 854.
- representatives of vendor, rights of, 841.
- rights of assignee of vendee, 850.
- rights of inheritance from contracting parties, 839-848.
- rights of inheritance, contract never performed, 842-844.
 - (a) when equitable conversion is not made, 843.
 - (b) when good title cannot be made, 844.
- rights of vendee's heir or devisee, 840.
- rights of vendor's representatives, 842.
- sale in lieu of strict foreclosure, 863.
- specific performance,
 - assignee in bankruptcy of vendee, not subject to, 856.
 - assignee of vendee not subject to, 851, 853.
 - foreclosure of vendee's specific performance, equity, 862.
 - grantee of vendee subject to specific performance, 852, 853.
- subsequent purchasers, rights of, 850.
- unperformed conditions, effect, 845.
- waste by vendor or vendee, 857.

EQUITABLE RELIEF AGAINST PROCEEDINGS AT LAW, 637-674.

- accident as ground for relief, 658.
- attorney's unauthorized appearance, relief against, 665.
- criminal proceedings, not enjoined, 644.
- defense must be meritorious, 667.
- equitable proceedings and decrees, injunctions against, 642.
- executions, injunctions against, 671-674.
- federal court's injunction against state courts, 640.
- foreign jurisdictions, proceedings in enjoined, 670.
- fraud as ground for relief, 649.
- fraud after trial as ground for relief, 653.
- fraudulent concealment as ground for relief, 654.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

EQUITABLE RELIEF AGAINST PROCEEDINGS AT LAW,—*Continued.*

general doctrine, 638.
inexcusable neglect as affecting relief, 639.
jurisdiction exercised when, 645-648.
meritorious defense must be shown, 667.
mistake as ground for relief, 659, 660.
new trial at law, jurisdiction to grant, 663.
newly discovered evidence as ground, 661.
origin of jurisdiction, 637.
perjury as ground for relief, 656.
probate decrees, relief against, 643.
process, failure to serve, relief, 663-666.
refusal of relief, instances, 655.
summons, failure to serve, relief, 663-666.
state court cannot enjoin United States court, 641.
statutory remedies, effect of, 669.
surprise as ground for relief, 662.
unauthorized appearance of attorney, 665.
unconscionable conduct as ground for relief, 651.
violation of stipulation as ground for relief, 650.
want of jurisdiction as ground for relief, 663.

EQUITABLE TRESPASS defined, 493.

EQUITABLE WASTE. See Waste.

ESTABLISHMENT OF BOUNDARIES,
equitable jurisdiction, 694-700.

See Boundaries.

ESTATES OF DECEASED PERSONS. See Executors and Administrators.

ESTOPPEL,
injunctions against nuisance, 537.
injunctions against trespass, 511.

EXCLUSIVE FRANCHISE protected by injunction, 583, and notes, 584.

EXCLUSIVE JURISDICTION OF EQUITY,
classification of remedies within, 9.

EXCUSES FOR LACHES. See Laches.

EXECUTION,
injunctions against, 671-674.
See Injunctions.
receivers, judgment against, how enforced, 179.
receivers, property in receiver's hands, 166, 167.
supplementary proceedings, effect on creditors' suits, 872.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

EXECUTORS AND ADMINISTRATORS,

receiver appointed to replace executor or administrator, 91.

receivership not denied mortgagee, 99.

Missouri rule, 99.

remedies to enforce obligations of, classified, 9.

suits involving estates classified, 11.

EXONERATION, 919.**F**

FEDERAL COURTS. See United States Courts.

FERRY,

franchise protected by injunction, 583, note.

FIDUCIARY OBLIGATIONS,

specific enforcement. See Specific Performance.

FINE AND IMPRISONMENT,

to enforce decrees, 12, 14.

FLORIDA,

injunctions, statutory regulations, 262, note.

receivership, statutes, 73, note.

statutory vesting title by decree, 13, note.

taxation, injunctions against, 389.

FORECLOSURE,

decree may by statute rest upon service by publication, 15.

strict foreclosure, classification of the remedy, 8.

See, also, Mortgages; Receivers.

FOREIGN RECEIVERS, 248-257.

See Receivers.

FRANCHISES,

exclusive franchises protected by injunction, 583 and notes, 584.

FRAUD,

boundary disputes, fraud as ground for equitable relief, 695.

fraudulent conveyances,

creditors' suits, legal remedy inadequate, 873, 874.

fraudulent transfers of chattels set aside in creditors' suit, 880.

injunction to relieve against fraud in proceeding at law, 650-656.

See Equitable Relief Against Proceedings at Law.

injunction to restrain fraudulent tax, 360.

receivers, liability for fraud, 217.

specific performance on ground of fraud, 830.

FUTURE ESTATES,

partition of, 706.

G**GARNISHMENT,**

receivers, garnishment of receiver, 165.

GAS SUPPLY,

exclusive franchise protected by injunction, 583, note.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

GEORGIA,

- injunctions, statutory regulations, 262, note.
- receivers for corporations, statutes, 127, note.
- receiver for unsecured creditors, 112, note.
- receivership statutes, 73, note.
- special assessments, injunctions against, 391.
- statutory vesting title by decree, 13, note.
- taxation, injunctions against, 390.

GIFTS, *causa mortis*,

- suits to recover, classified, 11.

GOOD-WILL,

- injunction to protect sale, 293.

GUARDIAN AND WARD,

- remedies to enforce obligations, classified, 9.

H

HIGHWAYS,

- eminent domain, injunction against railroad using, 467-470.

HOMESTEAD,

- marshaling of securities, effect on homestead, 869.
- receiver on foreclosure of mortgage, 99.

I

IDAHO,

- injunctions, statutory regulations, 262, note.
- receivers for corporations, statutes, 127, note.
- receivership statutes, 73, note.
- taxation, injunctions against, 392.

ILLINOIS,

- injunctions against taxation, 393-398.
- injunctions, statutory regulations, 262, note.
- receivers for corporations, statutes, 127, note.
- receiver on foreclosure, rule as to time of appointment, 93.
- receivership statutes, 73, note.
- special assessments, injunctions against, 399.
- statutory vesting title by decree, 13, note.

IMPRISONMENT,

- to enforce decrees, 12, 14.

IMPROVEMENTS,

- in partition suits, 719.

INADEQUACY OF LEGAL REMEDY,

- accounting, suits for, 927.
- contracts, breach not enjoined if legal remedy adequate, 290.
- creditors' suits as affected by legal remedies, 872.
- easements protected by injunction, 546.

Equitable Remedies, Vol. II—115

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

INADEQUACY OF LEGAL REMEDY,—Continued.

- fraudulent conveyances, creditor's legal remedy inadequate, 873, 874.
- injunction of attorney-general not barred by *quo warranto*, 302.
- injunction, nuisances enjoined, 513.
- injunctions to protect easements, 546.
- injunctions to protect water rights, 561.
- insolvency of defendant, trespass enjoined, 497.
- interpleader, because of, 39.
- receivership, because of, 69.
- specific performance, inadequacy of damages, 745.
- taxation not enjoined when legal remedy adequate, 359.

INCORPOREAL PROPERTY,

- partition of, 707.

INDIANA,

- injunctions, statutory regulations, 262, note.
- receivers for corporations, statutes, 127, note.
- receiver on foreclosure, rule as to time of appointment, 93.
- receivership statutes, 73, note.
- special assessments, injunctions against, 402.
- statutory vesting title by decree, 13, note.
- taxation, injunctions against, 400, 401.

INFANCY,

- laches, infancy an excuse, 29.
- receiver for infants' estate, 75.

INFRINGEMENT. See Injunctions (Copyrights, Patents).**INJUNCTIONS,**

- actions at law, proceedings in enjoined, 637-674.
- See Equitable Relief Against Proceedings at Law.
- Alabama, statutes regulating injunctions, 262, note.
- Arizona, statutes regulating injunctions, 262, note.
- Arkansas, statutes regulating injunctions, 262, note.
- blacklisting enjoined, 610.
- boycotts, injunctions against, 606-616.
- See Combinations, etc., this title.
- boycotting combinations, 623.
- breach of trust enjoined, 266.
- California, statutes regulating injunctions, 262, note.
- chattel mortgages, injunctions relating to, 320.
- Colorado, statutes regulating injunctions, 262, note.
- combinations, strikes and boycotts enjoined, 585-623.
- analysis of rights, 587.
- blacklisting, 610.
- boycotts, 606-616.
- boycotting combinations, 623.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

INJUNCTIONS,—Continued.

- capital, combinations of, 623.
- combinations, injunctions against, 617-623.
- competition, boycotts affecting, 609.
- continuing injury as ground for enjoining boycott, 614.
- criminal acts, combinations enjoined as, 619.
- development of remedy, 586-591.
- fear, boycott induced by, 608.
- inducing breach of contract a legal wrong, 589-593.
- interference by influencing dealer or customer, 591.
- interference by influencing employee, 590.
 - by intimidation, 616.
 - in absence of contract, 593.
 - with performance of business, 592.
 - right to freedom from, 594.
- interstate commerce, combinations against, 622, 627.
- intimidating threats as ground for injunction, 603.
- intimidation as ground for injunction, 600.
 - moral intimidation, 605.
- justifiable interference, 595.
- legal rights must be in jeopardy, 585.
- loss of business no ground for enjoining combination, 625.
- mandatory injunction against combination, 618.
- monopoly by combination enjoined, 626.
- moral intimidation as ground for injunction, 605.
- motive as affecting liability, 597.
- multiplicity of suits as ground for enjoining boycott, 613.
- nuisance as ground for enjoining boycott, 615.
- parties affected by injunction, 620.
- persuasion, boycott induced by, 607.
- persuasion, justifiable when, 595.
- picketing as ground for injunction, 604.
- preliminary injunction against combination, 621.
- producing breach of contract a legal wrong, 589-593.
- right of probable expectancy, 598.
- right to have labor or trade flow freely, 598.
- right to protection of personal freedom, 599.
- rights which are protected, 585.
- state commerce statutes, combinations against, 628.
- strikes, 600-605.
- threats to strike as ground for injunction, 602.
- common carriers, injunction to enforce obligations of, 633.
- confidence, breach of confidence enjoined, 267.
- Connecticut, statutes regulating injunctions, 262, note.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

INJUNCTIONS,—Continued.

- contracts, injunction to restrain breach, 270-300.
 - agreements expressly negative, 297.
 - agreements not expressly negative, 298.
 - agreements of negative nature, 292, 297.
 - agreement to abstain from certain trade, 292.
 - breach of lease enjoined, 285-287.
 - breach of negative covenant enjoined, 775.
 - competition, agreements to abstain from, 294, 295.
 - employment, no injunction to protect, 290, 291.
 - exclusive rights by contract protected, 296.
 - good-will, protection of sale, 293.
 - inadequacy of legal remedy a prerequisite, 299.
 - lease, breach enjoined, 285-287.
 - liquidated damages, provisions, effect on injunction, 300.
 - negative agreements, 292, 297.
 - negative covenants, breach enjoined, 775.
 - negative stipulations, 289.
 - penalty, provisions for as affecting injunction, 300.
 - restrictive covenants, 272-284.
- See *infra* in this title, covenants, restrictive.
- sale of good-will, 293.
- services, no injunction in ordinary contracts, 290.
- specific performance, analogous remedy, 271.
- copyrights protected by injunction, 574, 575.
- corporate names protected by injunction, 581.
- corporations, injunctions against, 301-308.
 - attorney-general's suit to enjoin *ultra vires* acts, 302.
 - directors, stockholders may enjoin misdealing, 305.
 - existence not challenged by injunction, 308.
 - office, title not determined by injunction, 307.
 - quo warranto* no bar to attorney-general's injunction, 302.
 - stockholders' suits to enjoin corporation, 302, 306.
 - stockholders' suits to enjoin directors' misdealing, 305.
 - stockholders' suits to enjoin *ultra vires* acts, 303.
 - third party's suit to enjoin *ultra vires* act, 304.
 - ultra vires* acts, 301-304.
- covenants, restrictive, 272-284.
 - actual notice unnecessary, 282.
 - equitable easements, 272.
 - injury, amount unimportant, 281.
 - mandatory injunctions, 283.
 - neighborhood, change as affecting covenants, 274.
 - personalty, contract protected, 284.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

INJUNCTIONS,—Continued.

criminal acts,

combination enjoined as criminal act, 619.

criminal proceedings not enjoined, 644.

damage a prerequisite for protection of easements, 548.

decrees in equity, injunctions against, 642.

Delaware, statutes regulating injunctions, 262, note.

diversion of watercourse enjoined, 562.

easements, equitable, 272-284.

See *supra* in this title, covenants, restrictive.

easements protected by injunction, 543-560.

absolute right of plaintiff, 553.

balance of injury, 552.

damage a prerequisite for injunction, 548.

inadequacy of legal remedy as ground, 546.

jurisdiction of equity, nature and extent, 543-546.

multiplicity of suits as ground, 545.

previous trial at law not a prerequisite, 549.

relief, nature of, 554.

threatened injury, nature of injury, 551.

threatened injury, nature of threat, 550.

elections, injunction to restrain, 331, 332.

electric currents protected by injunction, 635.

eminent domain, injunctions against, 465-473.

acquiescence, 472.

alternative decree, damages or injunction, 473.

damages or injunction, alternative decree, 473.

entry enjoined, 466.

general principles, 465.

highways, railroads in, 467-470.

police power distinguished, 465, note.

proceedings never enjoined, 466.

railroads in streets and highways, 467-470.

streets, changing grade, 471.

streets, railroads in, 467-470.

streets, vacating, 471.

employment, interference enjoined, 585-628.

See Combinations, Strikes and Boycotts, *supra*.

equitable estates and interests protected by injunction, 266-269.

equitable remedies, aided by injunction, 265.

equitable waste, see *infra*, this title, Waste.

exclusive franchises protected by injunction, 583, and notes, 584.

execution, injunctions against, 671-674.

federal courts not enjoined by state courts, 641.

federal injunctions against state courts, 640.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

INJUNCTIONS,—*Continued*.

Florida, statutes regulating injunctions, 262, *note*.
 foreign jurisdiction, proceedings of enjoined, 670.
 foreign states, acts within enjoined, 18.
 franchises, exclusive, protected, 583, and *notes*, 584.
 fraud in action at law, equitable relief, 650-656.
 fundamental principle of the remedy, 263.
 Georgia, statutes regulating injunctions, 262, *note*.
 Idaho, statutes regulating injunctions, 262, *note*.
 Illinois, statutes regulating injunctions, 262, *note*.
 inadequacy of legal remedy, easements protected, 546.
 Indiana, statutes regulating injunctions, 262, *note*.
 inexcusable neglect a bar to, against judgment at law, 639.
 interlocutory injunctions, generally, 264.

See *infra* in this title, preliminary injunctions.

interference with contracts, 585-628.

See Combinations, etc., *supra*.

interstate commerce, combinations against, enjoined, 622, 627.

Iowa, statutes regulating injunctions, 262, *note*.

judgments, injunction against. See **Equitable Relief Against Proceedings at Law**.

Kansas, statutes regulating injunctions, 262, *note*.

Kentucky, statutes regulating injunctions, 262, *note*.

laches, limitation of doctrine of, 24.

legal proceedings enjoined, 637-674.

See **Equitable Relief Against Proceedings at Law**.

legal waste, see *infra*, this head, **Waste**.

libel, injunctions against, 481, 629-631.

literary property protected by injunction, 576, and *notes*.

Maine, statutes regulating injunctions, 262, *note*.

mandatory injunctions,

combinations enjoined, 618.

easements protected by mandatory injunctions, 554.

generally, 636.

nuisances enjoined, 533.

restorative remedy, 3.

restrictive covenants protected, 283.

trespass enjoined, 510.

Maryland, statutes regulating injunctions, 262, *note*.

Massachusetts, statutes regulating injunctions, 262, *note*.

Michigan, statutes regulating injunctions, 262, *note*.

Minnesota, statutes regulating injunctions, 262, *note*.

Mississippi, statutes regulating injunctions, 262, *note*.

Missouri, statutes regulating injunctions, 262, *note*.

monopoly by combination enjoined, 626.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

INJUNCTIONS,—*Continued.*

Montana, statutes regulating injunctions, 262, *note*.

mortgages,

injunction in behalf of mortgagee, 319.

sale under power in mortgage or trust deed enjoined, 316-318.

usury, injunction to relieve mortgagor, 317.

multiplicity of suits as ground for enjoining boycott, 613.

See, also, Bills of Peace; and *infra*, this title, Nuisance, Taxation, Trespass.

municipal corporations, injunctions against, 339-355.

bonds, issue enjoined by taxpayer, 349.

contracts, improper award enjoined, 351.

county seat, removal enjoined, 352.

discretionary acts not enjoined, 342.

exceptions to the general rule, 341.

indebtedness, excessive, enjoined, 350.

limitations on remedy by injunction, 339-342.

ordinance, relief against by injunction, 354.

organization, validity of, not tried by injunction, 343.

removal of county seat enjoined, 352.

taxpayers' suits, injunctions in, 344-349.

Massachusetts rule, 347.

New York rule, 346.

Ohio rule, 348.

ultra vires payments enjoined, 353.

wrongful acts enjoined, 355.

names of corporations protected by injunctions, 581.

nature generally, 262.

Nebraska, statutes regulating injunctions, 262, *note*.

New Hampshire, statutes regulating injunctions, 262, *note*.

New Jersey, statutes regulating injunctions, 262, *note*.

New York, statutes regulating injunctions, 262, *note*.

North Dakota, statutes regulating injunctions, 262, *note*.

notice, breach of covenant enjoined without actual, 282.

nuisance, injunctions against, 512-542.

acquiescence, rules of, apply, 537.

avoidability of nuisance by plaintiff, effect, 532.

balance of injury, 529-531, and *notes*.

complete relief on granting injunction, 536.

contribution of others no defense, 540.

criminal nuisances, jurisdiction, 527.

damage a prerequisite to injunction, 526.

danger must be imminent for injunction, 523, 524, and *notes*.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

INJUNCTIONS,—Continued.

- defenses,
 - contribution of others no defense, 540.
 - reasonable use no defense, 539.
- estoppel, rules of, apply, 537.
- form of injunction, 534.
- former trial at law, necessity of, 519-522.
- illegality of nuisance no ground for injunction, 527.
- imminent danger necessary for injunction, 523, 524, and notes.
- inadequacy of legal remedy, 513.
- injury, balance of, 529-531, and notes.
- irreparability of threatened injury, 525.
- irreparable and continuing or recurring nuisances, 514, and notes, 515.
- jurisdiction, extent and nature, 512-517.
 - miscellaneous grounds, 517.
- laches, rules of, apply, 537.
- legalized nuisances not enjoined, 541.
- legal remedy inadequate, 513.
- malice as ground for injunction, 528.
- mandatory injunctions, 533.
- motive of defendant, effect, 528.
- multiplicity of suits as ground for injunction, 513, 516.
- parties plaintiff and defendant, 538.
- permanent injunction without previous trial at law, 521.
- pleading, complaint must allege what, 518.
- previous trial at law, necessity of, 519-522.
- public nuisances,
 - injunctions against, generally, 542.
 - by individual, 478.
 - by state, 479.
 - analogous acts enjoined by state, 480.
- reasonable use no defense, 539.
- relief given by injunction, 533, 536.
- statutory nuisance, injunctions against, 527.
- temporary injunctions, when granted, 535.
- temporary injunction without previous trial at law, 520.
- threatened injury, must it be irreparable, 525.
- threatened nuisances only, enjoined, 523.
- use, reasonable use no defense, 539.
- object of injunction, 262.
- officers, public, 321-338.
 - See *infra*, this title, Public Officers.
- Ohio, statutes regulating injunctions, 262, note.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

INJUNCTIONS,—Continued.

Oklahoma, statutes regulating injunctions, 262, note.

Oregon, statutes regulating injunctions, 262, note.

patents, infringement enjoined, 565-573.

abandonment of infringement, effect, 571.

accounting with injunction, 568.

damages with injunction, 568.

injury, magnitude immaterial, 567.

lashes, effect, 572.

magnitude of injury immaterial, 567.

other relief granted, injunction denied, 569.

plaintiff must show what, 565.

pleading, complaint must allege what, 566.

preliminary injunction, granted when, 573.

relief denied, grounds, 570.

Pennsylvania, statutes regulating injunctions, 262, note.

perjury in action at law, relief against, 656.

permanent injunctions,

nuisance enjoined without previous trial at law, 521.

pollution of watercourse enjoined, 561.

political rights not involving property, no injunction, 321.

preliminary injunctions, generally, 264.

combinations, preliminary injunctions against, 621.

copyright infringement cases, 575.

patent infringement cases, 573.

previous trial at law not a prerequisite to protection of easement, 549.

probate decrees, injunctions against, 643.

proceedings at law enjoined, 637-674.

See Equitable Relief Against Proceedings at Law.

proceedings in equity, injunctions against, 642.

prohibitory, preventive remedy, 3.

public nuisance enjoined by individual, 478.

public nuisance enjoined by state, 479.

public nuisance, analogous acts, enjoined by state, 480.

public officers, injunctions against, 321-338.

de facto officers, injunctions against, 338.

discretionary acts enjoined when, 329.

elections, generally no injunction to prohibit, 331, 332.

executive officers enjoined when, 328.

federal officer not enjoined by state court, 325.

payment of salary not enjoined, 336.

political acts not enjoined, 324.

possession of office protected by injunction, 335.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

INJUNCTIONS,—*Continued*.

- removal not enjoined, 337.
 - salary, injunction to restrain payment, 336.
 - state officer enjoined from collecting taxes, 326.
 - state officer, injunction against, 327.
 - suits by officers against other officers, 330.
 - taxes, state, collection enjoined, 326.
 - title to office, not tried by injunction, 333, 334.
 - unlawful acts enjoined, 321, 322.
 - unlawful acts not enjoined when, 323.
- See, also, Municipal Corporations and Taxation, in this title.
- receiver's possession protected by injunction, 164.
 - restrictive covenants. See *supra* in this title, Covenants, Restrictive.
 - Rhode Island statutes regulating injunctions, 262, note.
 - right of privacy protected by injunction, 632.
 - sale under power in trust deed or mortgage enjoined, 316-318.
 - services, relief in contracts for, 289-291.
 - South Carolina, statutes regulating injunctions, 262, note.
 - South Dakota, statutes regulating injunctions, 262, note.
 - state court cannot enjoin United States court, 641.
 - state courts enjoined by federal courts, 640.
 - state officer enjoined from collecting tax, 326.
 - state officers enjoined when, 327.
 - state trade and commerce statutes, combinations against, 628.
 - statutes, abstract of, 262, note.
 - stipulation in action at law, injunction of judgment for fraud, 650-656.
 - See, also, Equitable Relief Against Proceedings at Law.
 - strikes, boycotts and combinations enjoined, 585-628.
 - See Combinations, *supra*, this title.
 - taxation, injunctions against, 356-464.
 - Alabama, general rule in, 379.
 - Arizona, general rules, 380.
 - Arkansas, general rules, 381.
 - California, general rules, 382.
 - cloud on title as ground for injunction, 362.
 - Colorado, general rules, 385.
 - collection of state taxes enjoined, 326.
 - Connecticut, general rules, 387.
 - Delaware, general rules, 388.
 - federal courts enjoining state taxes, 366-378.
 - adequacy of remedy in state courts no bar, 367.
 - grounds of jurisdiction, 368.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

INJUNCTIONS,—Continued.

- irreparable injury, 370.
- multiplicity of suits, 372.
- property in federal receiver's hands, 377.
- special assessments, 378.
- state tax in violation of contract, 374.
- valuation on unjust discrimination, 371.
- federal taxes, no injunction, 365.
- fraud as ground for injunction, 360.
- Florida, general rules, 389.
- Georgia, general rules, 390.
- Idaho, general rule, 392.
- illegality of tax as ground for injunction, 363.
- Illinois, rules in, 393-398.
- inadequacy of legal remedy, as ground to enjoin, 359.
- Indiana, rules in, 400, 401.
- Iowa, rules in, 403.
- irregularity alone insufficient for injunction, 357.
- irreparable injury as ground to enjoin, 358.
- Kansas, rules in, 405-407.
- Kentucky, rules in, 409.
- Louisiana, rules in, 410.
- Maine, rules in, 411.
- Maryland, rules in, 412.
- Massachusetts, rules in, 414.
- Michigan, rules in, 415.
- Minnesota, rules in, 417.
- Mississippi, rules in, 419.
- Missouri, rules in, 420.
- Montana, rules in, 422.
- multiplicity of suits ground for injunction, 358-361.
- Nebraska, rules in, 423.
- Nevada, rules in, 425.
- New Hampshire, rules in, 426.
- New Jersey, rules in, 427.
- New Mexico, rule in, 428.
- New York, rules in, 429, 430.
- North Carolina, rules in, 432.
- North Dakota, rules in, 434.
- Ohio, rules in, 435.
- Oklahoma, rules in, 437-439.
- Oregon, rules in, 440.
- Pennsylvania, rules in, 442.
- personal property tax not enjoined, 359.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

INJUNCTIONS,—Continued.

- Rhode Island, rules in, 443.
- South Carolina, rules in, 444.
- South Dakota, rules in, 445.
- state taxes, collection enjoined, 326.
- tender of valid portion prerequisite to injunction, 357.
- Tennessee, rule in, 447.
- Texas, rules in, 448.
- United States courts enjoining state taxes, 366-378.
 - adequacy of remedy in state courts no bar, 367.
 - grounds of jurisdiction, 368.
 - irreparable injury, 370.
 - state tax in violation of contract, 374.
 - valuation on unjust discrimination, 371.
 - multiplicity of suits, 372.
 - property in federal receiver's hands, 377.
 - special assessments, 378.
- Utah, rule in, 450.
- Vermont, rule in, 451.
- Virginia, rule in, 453.
- Washington, rules in, 454.
- West Virginia, rules in, 456.
- Wisconsin, rules in, 458-462.
- Wyoming, rules in, 464.
- temporary injunctions.
 - nuisances enjoined by, 535.
 - nuisance enjoined without previous trial at law, 520.
- See, also, Preliminary Injunctions, *supra*, in this title.
- Tennessee, statutes regulating injunctions, 262, note.
- Texas, statutes regulating injunctions, 262, note.
- ticket scalpers enjoined, 634.
- torts prevented and restrained by injunction, 474, 475.
- trade, freedom of, interference enjoined, 585-628.
 - See Combinations, Strikes, etc., *supra*.
- trade-marks protected by injunction, 577, 582.
 - unfair competition enjoined, 578, 579, and notes.
- trade-names protected by injunction, 580, and note.
- trade secrets protected by injunction, 268.
- trading stamps, unfair dealing in, enjoined, 634.
- trespass, injunctions against, 493-511.
 - acquiescence, rules of, apply, 511.
 - balance of injury, 508.
 - continuous trespasses, 496.
 - destruction by defendant in possession enjoined, 503.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

INJUNCTIONS,—Continued.

- disputed title, effect, 502.
- eminent domain, compensation not made, 499.
- See, also, Eminent Domain, *supra*, in this title.
- estoppel, rules of apply, 511.
- injury, balance of, 508.
- injury, irreparable injury defined, 495.
- injury, probability of, 501.
- insolvency of defendant as ground, 497.
- irreparable injury defined, 495.
- jurisdiction, extent of, 494.
- jurisdiction, nature of, 493.
- lashes, rules of apply, 511.
- mandatory injunctions, 510.
- miscellaneous instances, 498.
- multiplicity of suits as ground for injunction, 496.
- personal remedy of plaintiff as affecting right to enjoin, 509.
- pleading, requisites of complaint, 500.
- possession, injunction to restore, 507.
- possession of plaintiff protected, 505.
- relief given by injunction, 510.
- repeated trespasses, 496.
- threatened trespass, probability, 501.
- title, dispute as to, effect, 502.
- title, establishment of title, 506.
- title, trial of, 506.
- use, mere use not enjoined, 504.
- trusts, breach of trust enjoined, 266.
- trust deeds, sale under power in deed enjoined, 316-318.
- unfair competition enjoined, 578, 579, 582.
- Vermont, statutes regulating injunctions, 262, note.
- Virginia, statutes regulating injunctions, 262, note.
- voluntary associations, 309-315.
 - expulsion of members enjoined, 310-313.
 - expulsion of members, not enjoined, when, 313.
 - property rights protected by injunction, 314, 315.
- Washington, statutes regulating injunctions, 262, note.
- waste, injunctions against, 482-492.
 - ameliorating waste not enjoined, 485.
 - completed injury not enjoined, 484.
 - equitable waste enjoined, 483.
 - extent of jurisdiction, 490.
 - relief against in equity, 491.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

INJUNCTIONS,—*Continued.*

injury,

must it be irreparable? 486.

must be threatened, 484.

jurisdiction,

extent of, 483.

origin of, 482.

legal waste, injunctions against, 483, 485.

legal waste, injunction sole equitable remedy, 491.

parties who may be enjoined, 492.

permissive waste, not enjoined, 485.

threatened, waste must be, 484.

title, what title plaintiff must show, 487, 488.

water rights protected by injunction, 561-564.

diversion of watercourse enjoined, 562.

inadequacy of legal remedy, 561.

navigation protected by injunction, 564.

obstruction of watercourse enjoined, 562.

obstructions to navigation enjoined, 564.

percolating waters, injunctions relating to, 563.

pollution enjoined, 561.

West Virginia, statutes regulating injunctions, 262, *note*.

Wisconsin, statutes regulating injunctions, 262, *note*.

Wyoming, statutes regulating injunctions, 262, *note*.

INJURY, threatened, how prevented, 3.

further, how prevented, 3.

IN PERSONAM,

equity acts *in personam*, 1.

remedies defined, 12.

IN REM,

remedies defined, 12.

INSOLVENCY,

assignee's insolvency as ground for receivership, 90.

corporation's insolvency not ground for receivership, 116.

executor's insolvency as ground for receivership, 91.

mortgagor's insolvency as ground for receiver, 93, 94.

receiver appointed in certain cases, 65.

receiver represents creditors of corporation, 190.

receivership in suits between adverse land claimants, 87.

trespass enjoined for defendant's insolvency, 497.

INSURANCE,

contracts for sale of land, vendee entitled to insurance money, 860.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

INTERLOCUTORY INJUNCTIONS, 264.

See Injunctions (preliminary, and temporary).

INTERPLEADER,

- admission of plaintiff's claim, 49.
- affidavit of non-collusion must accompany complaint, 59.
- between bailor and bailee, 53, 54.
- between contracting parties, 56.
- between landlord and tenant, 53, 55.
- between principal and agent, 53, 54.
- by master of vessel, 57.
- by receiver, 57.
- by sheriff, 56.
- common-law origin, 37.
- costs, 59.
- derivative title of plaintiff from claimant does not preclude plaintiff, 54, 56.
- disputed liability of plaintiff, 49.
- elements essential, 43.
- fund must be in plaintiff's custody, 50.
- general nature and object, 38.
- identity of thing, debt or duty essential, 44-46.
- independent claims no basis for the remedy, 47.
- indifferent plaintiff essential, 48-51.
- judgment between claimants bars the remedy, 41.
- legal or equitable claims, 42.
- multiplicity of suits avoided by interpleader, 39.
- nature of plaintiff's risk, 40.
- danger of double vexation must be real, 40.
- plaintiff may be interested in decision, 51.
- plaintiff must be the stake-holder, 50.
- plaintiff must not be independently liable to one claimant, 52, 53.
- exception, 53.
- pleading, bill must state what, 38, 41, 58, 59.
- practice, affidavit of non-collusion must accompany complaint, 59.
- privity between claimants essential, 47.
- rationale of the remedy, 38.
- specific relief not obtained, 38.
- stage at which suit may be brought, 41.
- stake-holder, plaintiff must be merely, 48-51.
- statutory legal action of interpleader, 61.
- threats sufficient to justify remedy, 41.
- waiver of plaintiff's claim, 49.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

INTERSTATE COMMERCE,

combinations against interstate commerce enjoined, 622, 637.

INTERVENTION,

receiver, intervention in pending action, 194.

IOWA,

injunctions, statutory regulations, 262, note.

receiver during mortgage redemption period, 98.

receivers for corporations, statutes, 127, note.

receivership statutes, 73, note.

special assessments, injunctions against, 404.

statutory vesting title by decree, 13, note.

taxation, injunctions against, 403.

IRREPARABLE INJURY defined, 495.

injunction, nuisances enjoined, 513.

J**JOINT TENANCY,**

accounting, suits between joint tenants, 933.

JUDGMENT CREDITORS' SUITS. See Creditors' Suits; Receivers.**JUDGMENTS,**

creditor's suits, necessity for judgment at law, 882-884.

equitable relief against, 637-674.

See Equitable Relief Against Proceedings at Law.

interpleader improper after claimants have reduced their claims to judgment, 41.

receiver, judgment against, how enforced, 179.

receivership does not affect lien, 156.

JUDICIAL SALE,*in personam* procedure, 12.

to enforce lien, classification of remedy, 10.

JURISDICTION,

concurrent jurisdiction,

remedies which belong to, 6, 11.

assignment of dower, 691.

equitable relief for want of jurisdiction in action at law, 663.

equitable waste, jurisdiction of injunction, 490.

injunctions against trespass, 493, 494.

injunctions against nuisances, 512-517.

of party essential to a decree *in personam*, 15.of party not necessary in certain statutory remedies *in rem*, 15.of property essential to a statutory decree *in rem*, 14.

patent rights, United States courts have exclusive jurisdiction, 565.

quia timet. See *Quia Timet.*

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

JURISDICTION,—*Continued.*

- receivers, conflicting appointments, 170.
- foreign receiver's right to sue beyond his jurisdiction, 249, 250.
- leave of court to sue receiver, 171-175.

JURY,

- patent infringement cases, jury unnecessary, 566.

K

KANSAS,

- injunctions, statutory regulations, 262, note.
- receivership statutes, 73, note.
- special assessments, injunctions against, 408.
- statutory vesting title by decree, 13, note.
- taxation, injunctions against, 405-407.

KENTUCKY,

- injunctions, statutory regulations, 262, note.
- receivership statutes, 73, note.
- statutory vesting title by decree, 13, note.
- taxation, injunctions against, 409.

L

LACHES,

- adjudged without demurrer or plea of limitations, 26.
- breach of express continuing trust, 28.
- cancellation, remedy barred by laches, 267.
- coverture as an excuse, 31.
- creditors' suits, effect of laches, 330.
- defined, 21.
- doctrine, generally, 1, 19, 21.
- limitation of doctrine, 24.
- excuses for laches, 26-35.
 - breach of express continuing trust, 28.
 - coverture, 31.
 - ignorance of fraud, 27.
 - ignorance of one's rights, 26.
 - infancy, 29.
 - mental unsoundness, 30.
 - miscellaneous excuses, 35.
 - party in possession not chargeable with laches, 33.
 - pendency of another suit, 34.
- general principles, 19, 21.
- government, imputability of laches to, 25.
- ignorance of fraud as an excuse, 27.

Equitable Remedies, Vol. II—116

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

LACHES,—Continued.

- ignorance of one's rights as an excuse, 26.
- imputability of laches to government, 25.
- imputation to reversioner, none when, 32.
- increase in value of property, effect on plaintiff's claim, 23.
- infancy as an excuse for laches, 29.
- injunctions against nuisance, 537.
- injunctions against trespass, 511.
- injunction supporting legal right, limitation of doctrine, 24.
- limitation of doctrine, 24.
- limitations, analogy of followed, 20.
- long delay alone, laches from, 23, note.
- mental unsoundness as an excuse, 30.
- partnership suits, 942.
- patent infringement injunctions, 572.
- pendency of another suit as an excuse, 34.
- pleading of excuses, 36.
- prejudicial delay, 21, 22.
- receivership barred by laches of applicant, 68.
- reversioner, no imputation when, 32.
- statute of limitations, analogy of followed, 20.
- United States courts favor defense of laches, 23.

LANDLORD AND TENANT,

- breach of covenant enjoined, 285-287.
- receiver's right as to existing lease, 203.

LEGACIES,

- suits to recover, classified, 11.

LEGAL CLAIMS,

- interpleader invoked when, 42.

LEGAL ESTATE,

- not vested by decree in equity, 12.
- not vested by decrees of federal courts, 14.
- vested by decree under statute, 13.

LEGAL PROCEEDINGS,

- injunctions against proceedings at law, 637-674.
- See Equitable Relief Against Proceedings at Law.

LEGAL WASTE. See Waste.**LEGISLATION. See Statutes.****LETTERS PATENT. See Patents.****LIBEL,**

- injunction to restrain, 481, 629-631.
- receiver, libel on business of, contempt, 169.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

LIENS,

decree to enforce may rest upon service by publication, 15.
enforcement of,

classification of the remedy, 10.

receivership, effect on liens, 155-159.

LIMITATIONS, STATUTE OF,

creditors' suits, limitations in, 889.

lashes adjudged without plea of limitations, 36.

partnership suits, 942.

LIQUIDATED DAMAGES,

contract providing for, effect on injunction, 300.

LIQUIDATION OF PARTNERSHIP. See Receivers.

LITERARY PROPERTY,

injunctions to protect, 576, and notes.

LOUISIANA,

receivers for corporations, statutes, 127, note.

taxation, injunctions against, 410.

LUNACY,

receiver for lunatic's estate, 75.

M

MAINE,

injunctions, statutory regulations, 262, note.

receivership statutes, 73, note.

statutory vesting title by decree, 13, note.

taxation, injunctions against, 411.

MALICE,

injunctions against nuisance, motive, 528.

MANDATORY INJUNCTIONS, 636.

See, also, Injunctions.

MARKET FRANCHISE,

injunction to protect, 583, note.

MARRIED WOMEN,

lashes, excused by coverture, 31.

MARSHALING OF SECURITIES, 865-870.

homesteads, 869.

paramount encumbrancer not to be inconvenienced, 868.

relief given, nature of, 870.

rights of third parties protected, 867.

single debtor essential to the remedy, 868.

MARYLAND,

injunctions, statutory regulations, 262, note.

receivership statutes, 73, note.

special assessments, injunctions against, 413.

statutory vesting title by decree, 13, note.

taxation, injunctions against, 412.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

MASSACHUSETTS,

- injunctions in taxpayers' suits against municipality, 347.
- injunctions, statutory regulations, 262, note.
- receivership statutes, 73, note.
- special assessments, injunctions against, 414.
- taxation, injunctions against, 414.
- taxpayers' suits enjoining municipality, 347.

MAXIMS,

- equity acts *in personam*, 1.
- equity will not help those who have power to help themselves, 69.
- one who comes into equity must come with clean hands, 68.
- applicable to trade-mark cases, 582.

MECHANICS' LIENS,

- receivership, effect on lien, 156.

MENTAL INCAPACITY,

- laches excused by mental unsoundness, 30.

MICHIGAN,

- injunctions, statutory regulations, 262, note.
- receivers for corporations, statutes, 127, note.
- receiver for unsecured creditors, 112, note.
- receivership statutes, 73, note.
- special assessments, injunctions against, 416.
- statutory vesting title by decree, 13, note.
- taxation, injunctions against, 415.

MINES,

- receivership in suits between co-owners, 86.

MINNESOTA,

- injunctions, statutory regulations, 262, note.
- receivers for corporations, statutes, 127, note.
- receiver for unsecured creditors, 112, note.
- receivership statutes, 73, note.
- special assessments, injunctions against, 418.
- statutory vesting title by decree, 13, note.
- taxation, injunctions against, 417.

MISSISSIPPI,

- injunctions, statutory regulations, 262, note.
- receivership statutes, 73, note.
- statutory vesting title by decree, 13, note.
- taxation, injunction against, 419.

MISSOURI,

- injunctions, statutory regulations, 262, note.
- receiver on foreclosure, effect of administration, 80.
- receivership statutes, 73, note.
- special assessments, injunctions against, 421.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

MISSOURI,—Continued.

statutory vesting title by decree, 13, note.
taxation, injunctions against, 420.

MISTAKE,

cancellation for mistake. See Cancellation.
equitable relief against mistake in action at law, 659, 660.
reformation for mistake, 675-678

See Reformation.

specific performance refused because of. See Specific Performance.

MONOPOLIES,

injunctions against combinations, 626.

MONTANA,

injunctions, statutory regulations, 262, note.
receivership statutes, 73, note.
taxation, injunctions against, 422.

MORTGAGE,

chattel mortgages. See Chattel Mortgage.
foreclosure,

decree may rest upon service by publication, 15.
railroad mortgage, receivers, 129.
receiver appointed when, 92-104.

See, also, Receivers.

injunction on behalf of mortgagee, 319.
injunction to restrain sale under power in trust deed or mortgage, 316-318.
receivership to protect security, 98.
redemption, classification of the remedy, 8.

MULTIPLICITY OF SUITS,

boundary disputes of equitable cognizance, 696.
boycotts enjoined to avoid multiplicity of suits, 613.
easements protected by injunction, 545.
injunctions, nuisance enjoined, 513, 516.
interpleader to avoid, 39.
trespass enjoined to avoid multiplicity of suits, 496.

See, also, Bills of Peace.

MUNICIPAL CORPORATIONS,

award of contract enjoined for discrimination, 351.
bonds, issue enjoined by tax-payers, 349.
contracts, improper award enjoined, 351.
county seat, removal enjoined, 352.
discretionary acts of officers not enjoined, 342.
eminent domain, streets, injunction against railroad, 400.
indebtedness, excessive, injunction, 350.
injunction against railroads in streets, eminent domain, 400.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

MUNICIPAL CORPORATIONS,—Continued.

- injunctions against municipal corporations, 339-355.
 - bonds, issue enjoined by tax-payers, 349.
 - contracts, improper award enjoined, 351.
 - county seat, removal enjoined, 352.
 - discretionary acts not enjoined, 342.
 - exceptions to the general rule, 341.
 - indebtedness, excessive, enjoined, 350.
 - limitations of the remedy, 339-342.
 - organization, validity of not tried by injunction, 343.
 - removal of county seat enjoined, 352.
 - tax-payers' suits, injunctions in, 344-349.
 - Massachusetts rule, 347.
 - New York rule, 346.
 - Ohio rule, 348.
 - ultra vires payments enjoined, 353.
- organization, validity of not tried by injunction, 343.
- removal of county seat enjoined, 352.
- streets, changing grade, injunctions, 471.
- streets, vacating, injunction, 471.
- tax-payers' suits, injunctions in, 344-349.
 - Massachusetts rule, 347.
 - New York rule, 346.
 - Ohio rule, 348.
- ultra vires payments enjoined, 353.

MUTUAL MISTAKE,

- reformation for mutual mistake, 675.

N**NAVIGATION,**

- obstructions enjoined, 564.

NEBRASKA,

- injunctions, statutory regulations, 262, *note*.
- receiver on foreclosure, rule as to time of appointment, 68.
- receivership statutes, 73, *note*.
- special assessments, injunctions against, 424.
- statutory vesting title by decree, 13, *note*.
- taxation, injunctions against, 423.

NEGLIGENCE,

- receivers, liability for negligence, 217.

NEVADA,

- taxation, injunctions against, 425.

NEW HAMPSHIRE,

- injunctions, statutory regulations, 262, *note*.
- taxation, injunctions against, 426.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

NEW JERSEY,

injunctions, statutory regulations, 262, note.
 receivers for corporations, statutes, 127, note.
 receivers, supplemental proceedings, 160.
 receivership statutes, 73, note.
 special assessments, injunctions against, 427.
 statutory vesting title by decree, 13, note.
 taxation, injunctions against, 427.

NEWLY DISCOVERED EVIDENCE,

equitable relief in action at law, 661.

NEW MEXICO,

taxation, injunctions against, 428.

NEW YORK,

eminent domain, elevated railroad cases, injunction, 470.
 injunctions in taxation suits against municipality, 346.
 injunctions, statutory regulations, 262, note.
 interpleader, New York rule as to, 40.
 receivers for corporations, statutes, 127, note.
 receivers, supplemental proceedings, 160.
 receivership statutes, 73, note.
 special assessments, injunctions against, 431.
 taxation, injunctions against, 429, 430.
 tax-payers' suits enjoining municipality, 346.

NORTH CAROLINA,

receivership in suits between co-owners, 87.
 receivership statutes, 73, note.
 special assessments, injunctions against, 433.
 taxation, injunctions against, 432.

NORTH DAKOTA,

injunctions, statutory regulations, 262, note.
 receivership statutes, 73, note.
 statutory vesting title by decree, 13, note.
 taxation, injunctions against, 434.

NOTICE,

injunction to restrain breach of covenant, no actual notice, 282.

NUISANCE,

injunction against boycott as nuisance, 615.
 injunctions against nuisance, 512-542.

See Injunctions.

public,

injunction by individual to restrain, 478.
 injunction by state to restrain, 479.
 injunction by state against analogous acts, 480.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

O

OFFICERS. See Public Officers; Corporations.

corporate officers. See Corporations.

OHIO,

injunctions in taxation suits against municipality, 348.

injunctions, statutory regulations, 262, note.

receivership statutes, 73, note.

special assessments, injunctions against, 436.

statutory vesting title by decree, 13, note.

taxation, injunctions against, 435.

tax-payers' suits enjoining municipality, 348.

OKLAHOMA,

injunctions, statutory regulations, 262, note.

receivership statutes, 73, note.

special assessment, injunctions against, 437.

taxation, injunctions against, 437-439.

OREGON,

injunctions, statutory regulations, 262, note.

receivership statutes, 73, note.

special assessments, injunctions against, 441.

taxation, injunctions against, 440.

OWELTY OF PARTITION, 718.

P

PARTIES,

creditors' suits,

joinder of parties plaintiff, 892.

one creditor suing in behalf of others, 892.

parties defendant, 891.

parties plaintiff, 890.

injunction, easement protected, parties to suit, 560.

nuisance, injunctions against, parties, 538.

partition suits, parties in, 713.

partnership suits, parties plaintiff, 940.

PARTITION,

accounting as incidental relief, 720.

chattels, partition of, 705.

common-law partition, 702.

decree did not pass title, 12.

decree may by statute rest upon service by publication, 18.

disability of party as affecting partition, 714.

disputed title, effect on partition, 712.

disseisin, effect of, 710, 711.

equitable jurisdiction, 703.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

PARTITION,—Continued.

estates of persons not in being, 716.
 future estates, 706.
 holder of particular estate a party, 715.
 improvements, 719.
 incidental relief in equity, 717-720.
 incorporeal property, partition of, 707.
 limitations on right to partition, 708.
 mode of partition, 721.
 owelty of partition, 718.
 particular estate holder as a party to suit, 713.
 parties defendant, 713.
 parties entitled to partition, 709.
 parties, holder of particular estate, 715.
 personal property, partition of, 705.
 possession as affecting receivership, 86.
 property subject to partition, 704.
 receivers in partition suits, 86.
 sales in partition, 722.

PARTNERSHIP,

classification of remedies pertaining to, 11.
 receivers in settlement of affairs, 78-85.

See Receivers.

specific performance of partnership agreements, 753.

PARTNERSHIP BILLS, 936-945.

accounting without dissolution, 939.
 creditors' rights on dissolution,
 in partnership property, 944.
 in separate property, 945.
 dissolution,
 creditors' rights in property of firm, 944.
 in separate property, 945.
 dissolution,
 disposition of partnership property, 943.
 dissolution essential, 938.
 exceptions, accounting without dissolution, 939.
 dissolution, suits for, 936.
 grounds for refusing relief, 941.
 laches, effect of, 942.
 legal remedy, 937.
 limitations, statute of, 942.
 parties plaintiff, who may sue, 940.
 property of firm, creditors' rights in, 943.
 receivers, 78-85.

See Receivers.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

PARTNERSHIP BILLS,—Continued.

property of firm, disposition on dissolution, 943.

relief denied, grounds, 941.

separate property of partners, creditors' rights in, 945.

PATENTS,

infringement enjoined, 565-573.

See Injunctions.

specific performance of patent contracts, 751.

PEACE, BILLS OF. See Bills of Peace.

PECUNIARY RELIEF,

classification of remedies granting, 11.

PENALTY,

contract providing penalty for breach, effect on injunction, 309.

PENNSYLVANIA,

injunctions, statutory regulations, 262, note.

receivers for corporations, statutes, 127, note.

taxation, injunctions against, 442.

PERCOLATING WATER. See Water Rights.

PERJURY,

equitable relief against perjury in action at law, 656.

PERMISSIVE WASTE not enjoined, 485.

PERSONAL INJURY,

receivers, ante-receivership claim has no preference, 237.

PERSONAL PROPERTY, partition of, 707.

contracts relating to, specific performance.

See Specific Performance of Contracts.

PLEADING,

boundary dispute, requisites of bill, 699.

creditors' bills against stockholders, 909.

excuses for laches, 36.

injunction, infringement of patent, complaint, 566.

injunctions, nuisance, complaint must allege what, 518.

injunction against trespass, complaint, 500.

interpleader. See Interpleader.

laches, excuses for, 36.

quieting title, statutory suits, 741, 742.

receivers, actions by, necessary allegations, 183, 184.

PLEDGE,

strict foreclosure, classification of the remedy, 8.

redemption, classification of the remedy, 8.

POLICE POWER,

eminent domain distinguished, 465, note.

POLITICAL ACTS,

injunction will not lie to restrain, 324.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

POLLUTION OF RUNNING WATERS enjoined, 561.

POSSESSION,

injunction to protect possession, 505.

injunction to restore possession, 507.

PRELIMINARY INJUNCTIONS, 264.

See Injunctions.

PREFERRED CLAIMS AGAINST RECEIVERS, 224-237.

PREVENTIVE REMEDIES, GENERALLY, 3.

PREVIOUS TRIAL AT LAW,

easements protected by injunction regardless of, 549.

PRINCIPAL AND AGENT,

accounting suits, 932.

PRIVACY, RIGHT OF,

injunction to protect right of privacy, 632.

PROBATE DECREES,

injunctions against, 643.

PROCEEDINGS SUPPLEMENTARY TO EXECUTION. See Supplementary Proceedings.

PROCESS,

personal service within jurisdiction essential to decree *in personam*, 15.

service by publication sufficient in certain statutory decrees *in rem*, 15, and note.

PROFITS,

accounting, suits for profits, 933.

PROHIBITION BY INJUNCTION, generally, 3.

PROVISIONAL REMEDIES. See Remedies.

PUBLICATION, SERVICE BY. See Process.

PUBLIC NUISANCE. See Injunctions.

PUBLIC OFFICERS,

de facto officers, injunctions against, 338.

discretionary acts enjoined when, 329.

executive officers, enjoined when, 328.

federal officer not enjoined by state court, 325.

injunctions against, 321-338.

injunctions by officers against other officers, 330.

injunctions, *de facto* officers, injunctions against, 338.

injunction, election not enjoined, 331, 332.

removal not enjoined, 337.

title to office not tried by injunction, 333, 334.

to protect possession of office, 335.

to restrain discretionary acts, 329.

possession of office protected by injunction, 335.

removal not enjoined, 337.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

PUBLIC OFFICERS,—Continued.

- salary, injunction to restrain payment, 336.
 - state officer enjoined from collecting taxes, 326.
 - state officers, injunctions against, 327.
 - title to office not tried by injunction, 333, 334.
- See, also, Municipal Corporations; Taxation.

PUBLIC SERVICE CORPORATIONS,

- injunction to enforce obligations, 633.

PUBLIC WEIGHER,

- exclusive right protected by injunction, 583, *note*.

Q

QUIA TIMET JURISDICTION,

- not a basis for classification of remedies, 7, 8.

QUIETING TITLE,

- classification of the remedy, 8.
 - generally, 723.
 - statutory decrees based on service by publication, 15, and *note*.
 - statutory suits, 735-742.
 - decree or judgment, 743.
 - nature of adverse claim, 739.
 - nature of remedy, equitable or legal, 736.
 - pleading of defendant, 742.
 - pleadings of plaintiff, 741.
 - possession of plaintiff, 737.
 - service of process by publication, 740.
 - title of plaintiff, 738.
 - suits to remove cloud distinguished, 725.
- See Cloud on Title.

QUO WARRANTO,

- attorney-general may enjoin notwithstanding, 302.
- elections, remedy by *quo warranto*, ample, 333.

R

RAILROADS,

- elevated railroads. See Elevated Railroads.
 - eminent domain, streets and highways, injunctions, 467-470.
 - franchise, exclusive, injunction to protect, 583, *note*.
 - injunction, eminent domain, streets, 467-470.
 - operating contracts, specific performance, 761.
 - receivers for railroads, 128-131.
- See Receivers.

RECEIVERS,

- actions against the receiver, 171-179.
- appeal, receiver's right of appeal, 178.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

RECEIVERS,—*Continued*.

- federal receivers, rule as to leave of court, 173.
- judgment after discharge, how enforced, 179.
- judgment against receiver, how enforced, 179.
- leave to sue, form of application, 177.
- leave to sue, when granted, 176.
- leave of court necessary, when, 171-174.
- leave of court not necessary, when, 175.
- leave of court, whether a "jurisdictional fact," 172.
- successor in office, execution against, 179.
- actions by receivers, 180-191.
 - appointment, how alleged, 183, 184.
 - appointment, jurisdiction of court assailable, 182.
 - appointment not assailable collaterally, 182.
 - appointment, proof of, 185.
 - collateral attack on appointment not permitted, 182.
 - creditors represented by receiver of insolvent corporation, 190.
 - defenses the same as those of party in interest, 186.
 - insolvent corporation, creditors represented by receiver, 190.
 - in whose name, 181.
 - jurisdiction of appointing court assailable, 182.
 - leave of court, necessity of, 180.
 - pleading, allegations of authority, 183, 184.
 - proof of appointment and powers, 185.
 - set-off against receiver, 187-189.
 - by stockholder in action by corporation receiver, 189.
 - by bank depositor, 188.
 - supplementary proceedings, receiver representing creditors, 191.
- action pending. See Pending Actions, *infra*, this title.
- agreement for receiver's compensation, effect, 242.
- Alabama statutes, 73, note.
- alimony and maintenance, receiver for, 133.
- allowance of claims against estate, 218-245.
- annuities, receivership to enforce payment, 114.
- answer fully denying bill, effect, 70.
- appeal, receiver's right of, 178.
- appointment, conflicting appointments, effect, 170.
 - discretionary, 63-67.
 - effect on pending actions, 192.
 - reversal of order appointing, effect on sale, 214.
- See, also, under Actions by Receivers, *supra*.
- ancillary receivers, 258-261.
 - administration of the fund, 259, 260.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

RECEIVERS,—Continued.

- appointment, 258.
- how far conclusive on primary receiver, 260.
- surrender of fund, 261.
- Arizona statutes, 73, note.
- arrest, immunity of receiver, 169.
- assets, duty to collect, 200.
- assignee for creditors, receiver to replace, 90.
- attachment against receiver, 165.
 - against foreign receiver, 251-254.
 - receiver in aid of, 112, note.
 - lien not destroyed by receivership, 156.
- attorney, receiver's right to employ, 206.
- bankruptcy, effect on receiver's compensation, 243.
- bankruptcy proceedings, receivership, 132.
- business, right of receiver to continue, 201.
- California statutes, 73, note.
 - alimony suits, receivership, 133.
- cancellation suits, receiver appointed when, 87.
- caution observed in appointing, 67.
- certificates issued by receivers, 214-216.
- chattel mortgage foreclosure, 104.
- claims and allowances, 218-245.
 - agreement for compensation, effect, 242.
 - bankruptcy, effect on receiver's compensation, 243.
 - claims arising before receivership, priority, 224-237.
 - compensation of receiver, 238-243.
 - discretion as to amount, 239.
 - considerations in determining, 240.
 - effect of revocation or reversal of order appointing, 241.
 - effect of agreement, 242.
 - effect of bankruptcy, 243.
 - construction, preference of claim for, 232.
 - costs, payment when funds inadequate, 244.
 - costs, when receivership proceedings void, 245.
 - credit barring priority of ante-receivership claim, 231.
 - credit given before receivership, effect on priority, 231.
 - duties of receiver as to claims, 218.
 - earnings, agreement to divide, preferred claim, 235.
 - expenses of continuing business, 221.
 - expenses of receivership, priority of, 220.
 - what are proper, 221.
 - payment when funds inadequate, 244.
 - when receivership proceedings void, 245.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

RECEIVERS,—Continued.

- labor claims, preference, 228, 229.
- loan of money, claim has no priority, 234.
- personal injury before receivership, claim not preferred, 237.
- preferred claims, 224-237.
- priority of ante-receivership claims, 224-237.
- priority of claims, 219.
- priority of receivership expenses, 220, 222.
- priority of tort claims against receiver, 223.
- rent, priority of claims for, 235, 236.
- repairs, preference of claims for, 232.
- rights of receiver as to claims, 218.
- supply claims accruing before receivership, 230.
- taxes, priority of, 219.
- torts of receiver, priority of claims for, 223.
- claims arising before receivership, priority, 224-237.
- clean hands of applicant a prerequisite to appointment, 68.
- Colorado statutes, 73, note.
- compensation of receiver, 238-243.
 - discretion as to amount, 239.
 - considerations in determining, 240.
 - effect of revocation or reversal of order appointing, 241.
 - effect of agreement, 242.
 - effect of bankruptcy, 243.
- conflicting appointments, effect, 170.
- conflicting claimants to land, suits between, 87.
- conflicting interests as affecting eligibility of receiver, 150.
- Connecticut statutes, 73, note.
- construction, priority of expense of, 232.
- contempt, interference with receiver, 154.
 - interference with receiver's possession, 163.
 - libel on receiver's business, 169.
 - refusal to deliver possession to receiver, 161, note.
 - suit against receiver without leave of court, 171.
- contracts, executory, receiver's right to perform, 202.
- contracts, right of receiver to make contracts, 204.
- co-owners, suits between, 86.
- corporations, receivers of,
 - after dissolution, receiver to wind up, 116, 123.
 - caution in appointment, 117.
 - creditor eligible for appointment, 151.
 - creditors' suits, notice of application, 146.
 - directors' breach of duty, stockholder's suit, 120-122.
 - dissolution and receiver, suit for, 119.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

RECEIVERS,—Continued.

- insolvency not ground for receivership, 116.
- judgment creditors' suits, 116, 125.
- mortgage or lien foreclosure on corporate property, 116.
- no governing body, receiver to manage, 116, 124.
- officers generally ineligible to appointment, 152, 153.
- petition never by the corporation itself, 118.
- possession of receiver that of court, 154.
- purpose of receiver's appointment, 116.
- statutory appointments, 127, note.
- stockholders, eligibility to appointment, 153.
- stockholders' suits, mismanagement, 116, 120-122.
- stockholders' suits, notice of application, 145.
- costs, payment, when funds inadequate, 244.
- creditor eligible for appointment, 151.
- decedents' estates, 76.
- definition of receiver, 62.
- Delaware statutes, 73, note.
- denial of bill by answer, effect, 70.
- discharge of receiver, 247.
 - judgment how enforced after discharge, 179.
- discretion of court in appointment, 64-67, 148.
- earnings, agreement to divide, preferred claim, 235.
- eligibility for appointment, 148-153.
- employees, receiver's rights relative to, 205.
- English statutory receivership, 72.
- equitable liens enforced by receiver, 105.
- execution against property in receiver's hands, 166, 167.
- execution of judgment against receiver, 179.
- executors and administrators replaced by receiver, 91.
- executory contracts, completed by receiver, 202.
- exemption of property from seizure for taxes, 168.
- ex parte* application for instructions, 199.
- appointment. See Notice of Application for Receiver, *infra*.
- expenses of receivership, priority, 220.
- expenses of receivership, propriety, 221.
- expenses of continuing business, priority, 222.
- expenses, payment when fund inadequate, 244.
- expenses, payment when appointment is void, 245.
- federal receivers, rule as to leave to sue, 173, 174.
- Florida statutes, 73, note.
- foreclosure. See mortgage, *infra*, this title.
- foreign receivers, 248-257.
 - attachment against foreign receiver, 251-254.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

RECEIVERS,—Continued.

- citizenship as affecting rights of attaching creditors, 252.
- comity as affecting actions by receiver, 255, 256.
- power of appointing court over receiver and others, 257.
- residence as affecting rights of attaching creditors, 252.
- rights of attaching creditors, 251, 252.
- right to sue beyond his jurisdiction, 249, 250.
- subsequent attaching creditors, receiver's rights against, 253, 254.
- fraud, liability for, 217.
- garnishment of receiver, 165.
- Georgia statutes, 73, note.
- Idaho statutes, 73, note.
- Illinois statutes, 73, note.
- imminent danger as necessary factor in appointment, 64.
- improvements, right of receiver to make, 207.
- Indiana statutes, 73, note.
- infants' estates, 74.
- insolvency, when ground for appointment, 65.
- instructions, duty to obtain, 199.
- interested party ineligible to appointment, 149.
- interference with receiver's possession, 162-169.
- Iowa statutes, 73, note.
- judgment against receiver, how enforced, 179.
- judgment creditors' suits, 106-109.
 - business fictitiously in wife's name, 109.
 - concealed property reached, 109.
 - jewelry and adornments reached, 109.
 - nature of property as affecting appointment, 108.
 - prior mortgagee's rights, 107.
 - rents, receiver of, 108.
- judgment, lien not destroyed by receivership, 156.
- jurisdiction of appointing court as affecting jurisdiction of suit by receiver, 249, 250.
- Kansas statutes, 73, note.
- Kentucky statutes, 73, note.
- labor claims prior to receivership, preference, 228, 229.
- laches of applicant a bar to the remedy, 68.
- leases, existing, receiver's rights as to, 203.
- leases, right of receiver to make, 208.
- liens, effect of receivership, 155-159.
- loan of money, claim for not preferred, 234.
- lunatics' estates, 75.

Equitable Remedies, Vol. II—117.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

RECEIVERS,—Continued.

- management and disposition of property, 197-217.
 - assets, duty of receiver to collect, 200.
 - attorney, receiver's right to employ, 206.
 - business, right of receiver to continue, 201.
 - certificates, 214-216.
 - nature of certificates, 215.
 - purposes of issue, 216.
 - discretion allowed to managing receiver, 198.
 - duty to collect assets, 200.
 - duty to obtain instructions, 199.
 - employees, receivers' rights as to, 205.
 - executory contracts, completion of, 202.
 - existing leases, receivers' rights as to, 203.
 - fraud, receiver's liability for, 217.
 - improvements, right of receiver to make, 207.
 - instructions, duty to obtain, 199.
 - leases, right of receiver to make, 208.
 - liability for fraud, negligence, etc., 217.
 - mistakes of judgment, receiver not chargeable, 198.
 - negligence, receiver's liability for, 217.
 - repairs, right of receiver to make, 207.
 - reversal of order appointing, effect, 213.
 - right of receiver to contract, 204.
 - right to complete executory contract, 202.
 - right to continue business, 201.
 - sales by receiver, 208-213.
 - effect of reversal of order appointing receiver, 212.
 - personalty, rules less strict, 211.
 - subject to confirmation, 210.
 - subject to existing liens, 212.
- Maine statutes, 73, note.
- managing receivers, discretion allowed, 198.
- Maryland statutes, 73, note.
- Massachusetts statutes, 73, note.
- master in chancery generally ineligible, 150.
- mechanic's lien, no receivership, 105.
- Michigan statutes, 73, note.
- Minnesota statutes, 73, note.
- Mississippi statutes, 73, note.
- Missouri statutes, 73, note.
- Montana statutes, 73, note.
- mortgage foreclosure, receiver in, 92-104.
 - administration on property, effect, 99.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

RECEIVERS,—Continued.

- assignment of premises, effect, 99.
- debt must be due, 98.
- English rule, 92.
- extent of receiver's title, 100.
- inadequacy of security as ground, 93, 94.
- insolvency of mortgagor as ground, 93, 94.
- junior mortgagee's application, 101, 102.
- negligence of mortgagor as ground, 95.
- notice of application, necessity for, 143.
- others than mortgagee may apply, 103.
- parties plaintiff, who may be, 103.
- redemption period, receiver during, 99.
- rights of junior as against prior mortgagee, 102.
- stipulations of mortgage as affecting receivership, 97.
- time of appointment, 98.
- United States rule, 93, and note.
- waste as ground for receiver, 96.

Nebraska statutes, 73, note.

negligence, liability for, 217.

New Jersey statutes, 73, note.

new trial, receivership *pendente lite*, 87.

New York statutes, 73, note.

North Carolina rule in suits between co-owners, 87.

North Carolina statutes, 73, note.

North Dakota statutes, 73, note.

notice of application for receiver, 135-147.

conflicting claimants to land, *ex parte* appointments, 141.

corporations, creditors' suits against, 146.

creditors' suits, notice in, 144.

defendant must be notified, 135, 136.

ex parte appointments rare, 135-137.

lack of notice, effect on appointment, 140-142.

in partnership suits, 141.

in suits between conflicting land claimants, 141.

in suits against trustees, 142.

mortgage foreclosure, notice, 143.

partnership suits, *ex parte* appointments, 141.

party in possession must be notified, 137.

pending suit, notice necessary in, 136.

railroad receivers, *ex parte* appointment, 147.

stockholders' suits, notice in, 145.

unnecessary when, 138, 139.

waiver of notice, 137.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

RECEIVERS,—Continued.

Ohio statutes, 73, note.

Oklahoma statutes, 73, note.

Oregon statutes, 73, note.

partition suits and suits between co-owners, 86.

mines, suits between co-owners, 86.

possession as affecting receivership, 86.

partner eligible for appointment, 151.

partnership settlements, 78-85.

after dissolution, agreement of liquidation, 82.

no agreement of liquidation, 83.

bond of partner to prevent receiver, 85.

death of partner, receivership, 84.

dissolution must be necessary, 79.

exclusion from management as ground for receivership, 81.

existence of partnership must be proved, 79.

former application, no bar to receivership, 85.

liquidation, where no agreement, 83.

liquidation by partner under agreement, 82.

mere right to dissolution insufficient for receivership, 86.

partner eligible for appointment, 151.

possession of partner, effect, 85.

pendency of suit a prerequisite to the remedy, 71.

pending actions,

appointment, effect on pending action, 192.

change of receiver, effect, 195.

intervention by receiver, 194.

necessary party when, 196.

substitution of receiver as plaintiff, 192.

substitution of receiver as defendant, 193.

personal injury before receivership, claim has no priority, 237.

possession of receiver, 154-169.

claimant against receiver must apply to court, 162.

how obtained by receiver, 161.

injunction to protect receiver's possession, 164.

interference of others, 162-169.

subject to existing liens, 155-159.

preferred claims against receiver, 224-237.

probability of plaintiff's success necessary, 66.

qualifications necessary, 62, 148, 153.

railroad receivers, 128-131.

foreclosure of railroad mortgage, 129-131.

notice of application, necessity for, 147.

remaindermen, receivers in suits to protect, 115.

removal of receiver, 246.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

RECEIVERS,--Continued.

- rent, priority of claims for, 235, 236.
- repair of property, preference of claim, 232.
- repairs, right of receiver to make, 207.
- rescission of contract to sell land, receivership, 113.
- residence as affecting eligibility of receiver, 153.
- reversal of order appointing, effect on compensation, 241.
- Rhode Island statutes, 73, note.
- sales by receiver, 208-213.
- See *supra*, Management and Disposition of Property.
- selection of receiver, 148.
- solicitor of party ineligible, 150.
- South Carolina statutes, 73, note.
- South Dakota statutes, 73, note.
- specific performance, receivership in, 111.
- strikes, effect on receivership, 169.
- statutory provisions in England, 72.
- statutory provisions in United States, 73.
- statutory regulations in the several states, 73, note.
- statutory liens enforced by receiver, 105.
- successor in office, execution of judgment against, 179.
- supplemental proceedings, statutes, 160.
- supplementary proceedings, 110.
- supplies furnished before receivership, preference, 230.
- taxes, exemption of receivership property from seizure, 166.
- Tennessee statutes, 73, note.
- Texas statutes, 73, note.
- torts of receiver, priority of claims for, 223.
- trustee, eligibility for appointment, 150.
- trusts, receivership to enforce, 88-92.
- unsecured creditors before judgment, receiver for, 112.
- Utah statutes, 73, note.
- vendor's lien, receivership to enforce, 111.
- Vermont statutes, 73, note.
- Virginia statutes, 73, note.
- Washington statutes, 73, note.
- West Virginia statutes, 73, note.
- Wisconsin statutes, 73, note.
- Wyoming statutes, 73, note.

REDEMPTION OF PLEDGES,

- classification of the remedy, 8.

RE-EXECUTION. See Reformation.**REFORMATION,** 675-683.

- auxiliary to ultimate relief, 4.
- decrees, form and effect, 683.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

REFORMATION,—*Continued*.

- degree of proof requisite, 682.
- equitable estate, owner may maintain, 4.
- estates established and protected by, 4.
- fraud as ground for reformation, 676-678.
- indirectly remedial, 4.
- interests established and protected by, 4.
- laches, effect, 680.
- legal estate, owner may maintain, 4.
- mutual mistake as ground, 675.
- negligence, effect on remedy, 680.
- object of the remedy, 4.
- parol proof, admissibility, 682.
- parties who may be relieved against, 681.
- protection afforded by the remedy, 4.
- unilateral mistake as ground, 676-678.
- volunteer not entitled to reformation, 679.

REIMBURSEMENT, 912-914.

- conditions of recovery, 913.
- incidents of recovery, 914.
- parties entitled to reimbursement, 912.
- recovery, amount of, incidents, 914.
- recovery, conditions of, 913.

RELIGIOUS ORGANIZATIONS,

- expulsion of member seldom enjoined, 312.
- injunction to protect property rights, 314, 315.

REMAINDERMEN,

- receivership to protect, 115.

REMEDIES,

- accounting, suits for, 926-935.
 - See Accounting.
- assignment of dower, 689-693.
 - See Assignment of Dower.
- boundary disputes, equitable jurisdiction, 694-700.
 - See Boundaries.
- classification of remedies,
 - first group: Ancillary and provisional remedies, 1.
 - second group: Preventive remedies, 2.
 - third group: Reformation and cancellation, 3.
 - fourth group: Remedies by which estates, interests, and primary rights, either legal or equitable, are directly declared, established or recovered, or the enjoyment thereof fully restored, 5-8.
 - first class, 6.
 - second class, 7.
 - third class, 8.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

REMEDIES,—Continued.

fifth group: Remedies by which equitable obligations are specifically and directly enforced, 9.

sixth group: Remedies in which the final relief is pecuniary, but is obtained by the enforcement of a lien or charge upon some specific property or fund, 10.

seventh group: Remedies in which the final relief is wholly pecuniary, and is obtained in the form of a general pecuniary recovery, 11.

contribution, 915-918.

See Contribution.

creditors' suits, 871-895.

See Creditors' Suits.

equitable, injunction in aid of, 265.

equitable relief against proceedings at law, 637-674.

exoneration, 919.

injunction, 262 et seq.

See Injunctions.

in personam remedies beyond territorial jurisdiction, 16, 17.

interpleader. See Interpleader.

marshaling securities, 865-870.

See Marshaling Securities.

partition suits, 701-722.

See Partition.

partnership suits, 936-945. See Partnership Bills.

receiver, appointment of. See Receivers.

reimbursement, 912-914.

See Reimbursement.

specific performance of contracts, 744-761.

See Specific Performance.

subrogation, 920-925.

See Subrogation.

suits to compel transfer of corporate stock, 864.

suits to quiet title, under statutes, 735-742.

See Quieting Title.

suits to remove cloud on title, 724-734.

See Cloud on Title.

REMOVAL OF RECEIVERS, 246.

RESCISSION. See Cancellation.

receiver appointed when, 113.

RESTORATION by mandatory injunction, 3.

RESTRICTIVE COVENANTS protected by injunction, 272-284. See Injunctions (covenants, restrictive).

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

RHODE ISLAND,

- injunctions, statutory regulations, 262, note.
- receiver for unsecured creditors, 112, note.
- taxation, injunctions against, 443.

RIPARIAN RIGHTS. See **Water Rights.**

S**SALES,**

- partition sales, 722.
- receivers. See **Receivers.**

SEQUESTRATION,

- to enforce decree, 14.
- to enforce lien,
 - classification of the remedy, 10.

SERVICE OF PROCESS. See **Process.**

SET-OFF,

- receivers, set-off in suits against, 187-189.

SOUTH CAROLINA,

- injunctions, statutory regulations, 262, note.
- receiver for unsecured creditors, 112, note.
- receivership statutes, 73, note.
- taxation, injunctions against, 444.

SOUTH DAKOTA,

- injunctions, statutory regulations, 262, note.
- receivership statutes, 73, note.
- special assessments, injunctions against, 446.
- taxation, injunctions against, 445.

SPECIAL ASSESSMENTS. See **Taxation.**

SPECIFIC PERFORMANCE,

- classification of the remedy, 9.
- of contracts,
 - classification of the remedy, 9.
 - See **Specific Performance of Contracts.**
- of fiduciary obligations,
 - classification of the remedy, 9.
- of mortgage,
 - classification of the remedy, 8.
- of trusts,
 - classification of the remedy, 9.

SPECIFIC PERFORMANCE OF CONTRACTS, 744-837.

- ambiguity and misdescription, effect, 779.
- arbitration agreements, 758.
- avoidability of plaintiff's performance, effect, 770.
- awards, 754.
- breach of negative covenant enjoined, 775.
 - See **Injunctions (contracts).**

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

SPECIFIC PERFORMANCE OF CONTRACTS,—Continued.

- building contracts, 760.
- certainty of contract essential, 764-768.
- chattels, contracts concerning, 748, 749.
- choses in action, contracts concerning, 750.
- completeness of contract essential, 764-768.
- concealment or non-disclosure, effect on remedy, 784.
- conditions precedent, effect of failure to perform, 806.
- consideration of contract must be valuable, 763.
- construction contracts, 760.
- contracts concerning land, 645.
- contracts relating to chattels, 748, 749.
- contract to devise land, 746.
- damages in equity instead of specific performance, 837.
- decree may by statute be based upon service by publication, 15.
- default in option to purchase, effect on relief, 807.
- defenses,
 - concealment or non-disclosure of facts, 784.
 - contingency foreseeable no defense, 797.
 - direct act of defendant no defense, 799.
 - forfeiture resulting from enforcement, 800.
 - fraud of defendant no defense, 776.
 - hardship, 785.
 - inadequacy of consideration, 790.
 - inadvertent covenant or act, 792.
 - inconvenience to the public, 795.
 - inequality in plaintiff's favor, 787.
 - injury to third persons as a bar, 794.
 - intoxication, 788.
 - laches a bar when, 814.
 - mistake as a defense, 777, 783.
 - oppressive consequences, 793.
 - performance of no benefit to plaintiff, 796.
 - public inconvenience, 795.
 - subsequent events no defense, if foreseeable, 797, 798.
 - title doubtful or unmarketable, 801-804.
 - uncertainty and indefiniteness, 768.
 - unfairness, effect, 785, 786.
 - unintended harsh consequence, 791.
- definiteness of contract essential, 764-768.
- direct act of party not equitable hardship, 799.
- discretionary nature of jurisdiction, 762.
- enforcement of decree must be possible, 757.
- extent of jurisdiction, 745.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

SPECIFIC PERFORMANCE OF CONTRACTS,—Continued.

- forfeiture clause, effect, 816.
- forfeiture resulting from enforcement, effect, 800.
- fraud of defendant no defense, 776.
- grounds of jurisdiction, 744.
- hardship on defendant, effect on remedy, 785.
- improvidence of the undertaking, effect, 789.
- inadequacy of consideration with other grounds, 790.
- inadequacy of damages as affecting remedy, 745.
- inadvertent covenant or act, effect on remedy, 792.
- inconvenience to public as a bar, 795.
- indirect enforcement, 775.
- inequality, effect on remedy, 787.
- injunction against breach of negative covenant, 775.
- injury to third persons as a bar, 794.
- intoxication of defendant, effect on remedy, 788.
- jurisdiction discretionary, 762.
- laches, what degree a defense, 814.
- land, contracts concerning, 745, 746.
- miscellaneous agreements, 753.
- misdescription and ambiguity, effect, 779.
- mistake, as affecting remedy, 777-783.
- mutuality, the doctrine of, 769-773.
- non-mutual contracts, 769-773.
- offer of plaintiff to perform condition to relief, 805.
- oppressive consequences as a bar, 793.
- options, 773.
- option to purchase, effect of default, 807.
- parol contracts, part performed, 817-830.
 - conveyance by plaintiff not sufficient, 825.
 - doctrine, rationale of, 817, 818.
 - doctrine rejected or modified in certain states, 823.
 - fraud, specific performance because of, 830.
 - marriage not a part performance, 829.
 - oral promise to give, 828.
 - part performance, acts of, 827.
 - payment not sufficient, 824.
 - personal services as part performance, 826.
 - possession alone, not sufficient for relief, when, 820.
 - possession alone, sufficient for relief, when, 819.
 - possession coupled with payment or improvements, 821.
 - vendor's suits, 822.
- partial performance with compensation, 831-836.
 - absence of basis for estimating compensation, effect, 836.
 - deficiency may consist of what, 832.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

SPECIFIC PERFORMANCE OF CONTRACTS,—Continued.

- dower right of vendor's wife, 834.
- indemnity instead of compensation, 835.
- limitations on vendee's right, 834.
- vendee's option of specific performance with compensation or rescission, 833.
- parol evidence to make contract certain or definite, 766.
- partnership agreements, 755.
- patents, contracts concerning, 751.
- performance depending on third party, 756.
- performance not benefiting plaintiff not enforced, 796.
- performance or offer of plaintiff, prerequisite to relief, 805.
- personal service contracts, 759.
- public inconvenience as a bar, 795.
- railroad operating agreements, 761.
- reasonable time after default, right to name, 815.
- receiver appointed when, 111.
- rendition of decree must be possible, 757.
- right to name reasonable time for performance, after default, 815.
- shares of stock, contracts concerning, 752.
- subsequent events, effect on remedy, 797, 798.
- tender before suit, when necessary, 809.
- terminable agreements not enforced, 755.
- terminable contracts, plaintiff's option, 774.
- things in action, contracts concerning, 750.
- time as affecting right to relief, 810-812.
- title, quality as affecting remedy, 801-804.
- unfairness, effect on remedy, 785, 786.
- unilateral contracts, 773.
- unintended harsh consequence, effect on remedy, 791.
- valuable consideration necessary, 763.
- vendor plaintiff must make good title, when, 808.
- vendor's suit for specific performance, 747.

STATE COURTS,

- federal courts cannot be enjoined by state courts, 641.
- injunctions by federal courts against state courts, 640.

STATUTE OF LIMITATIONS. See Limitations.

STATUTES,

- injunctions, statutes governing, 262, note.
- interpleader, legal action, 61.
- quieting title, statutory remedy, 735-742.
- receivers for corporations, 127.
- receivership statutes in England, 72.
- receivership statutes in United States, 73.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

STATUTES,—Continued.

- vesting legal title by decree, 13 and note, 14.
- operation confined to state of enactment, 14.
- operation does not extend to federal courts, 14.

STOCK,

- specific performance of corporate stock agreements, 752.

STOCKHOLDERS. See Corporations.

- creditors' suits against, 896-910.

See Creditors' Suits.

STOCKHOLDERS' SUITS. See Corporations.

STREETS,

- injunction against railroad, eminent domain, 467-470.

STRIKES,

- receivers, effect of strikes on receivership, 169.

STRIKES, BOYCOTTS AND COMBINATIONS, injunctions against, 585-628.

See Injunctions. See, also, Combinations, Strikes, etc.

SUBROGATION, 920-925.

- classification of the remedy, 11.
- conditions of allowance of subrogation, 923.
- co-surety's subrogation to security indemnifying surety, 925.
- creditor's subrogation to security indemnifying surety, 925.
- indemnity of surety, creditor's or co-surety's subrogation to security, 925.
- nature of right, purely equitable, 922.
- operation, on what rights, 924.
- other security, effect of, 923.
- parties entitled to subrogation, 921.
- payment, effect of, 923.
- rights upon which subrogation operates, 924.
- security indemnifying surety,
 - creditor's subrogation, 925.
 - co-surety's subrogation, 925.

SUITS TO REMOVE CLOUD ON TITLE. See Cloud on Title.

SUPPLEMENTARY PROCEEDINGS,

- creditors' suits as affected by supplementary proceedings, 872.
- receiver appointed when, 110.
- receiver represents creditors to what extent, 191.
- receivers, statutory provisions, 160.

SUPPORT DEEDS,

- rescission of, 686.

SURETYSHIP,

- remedies pertaining to, classified, 11.

SURPRISE,

- equitable relief against surprise in action at law, 662.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

T

TAXATION,

- cloud on title as ground for injunction, 362.
- exemption from seizure of receivership property, 168.
- federal courts enjoining state taxes, 366-378.
 - adequacy of remedy in state courts, no bar, 367.
 - grounds of jurisdiction, 368.
- federal taxes not enjoined, 365.
- fraudulent tax enjoined, 360.
- illegality of taxes as ground for injunction, 363.
- inadequacy of legal remedy as ground to enjoin, 359.
- injunctions against special assessments, 364.
 - See Special Assessments, *infra*, this title.
- Injunctions against taxation, 356-464.**
 - Alabama, general rule in, 379.
 - Arizona, general rules, 380.
 - Arkansas, general rules, 381.
 - California, general rules, 383.
 - cloud on title as ground for injunction, 362.
 - Colorado, general rules, 385.
 - Connecticut, general rules, 387.
 - Delaware, general rules, 388.
 - federal courts enjoining state taxes, 366-378.
 - adequacy of remedy in state courts, no bar, 367.
 - grounds of jurisdiction, 368.
 - irreparable injury, 370.
 - multiplicity of suits, 372.
 - property in federal receiver's hands, 377.
 - special assessments, 378.
 - state tax in violation of contract, 374.
 - valuation on unjust discrimination, 371.
 - federal taxes, no injunction, 365.
 - Florida, general rules, 389.
 - fraud as ground for injunction, 360.
 - Georgia, general rules, 390.
 - Idaho, general rules, 392.
 - illegality of tax as ground for injunction, 363.
 - Illinois, rules in, 393-398.
 - inadequacy of legal remedy as ground to enjoin, 359.
 - Indiana, rules in, 400, 401.
 - Iowa, rules in, 403.
 - irregularity alone, insufficient for injunction, 357.
 - irreparable injury as ground to enjoin, 358.
 - Kansas, rules in, 405-407.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

TAXATION,—Continued.

- Kentucky, rules in, 409.
- Louisiana, rules in, 410.
- Maine, rules in, 411.
- Maryland, rules in, 412.
- Massachusetts, rules in, 414.
- Michigan, rules in, 415.
- Minnesota, rules in, 417.
- Mississippi, rules in, 419.
- Missouri, rules in, 420.
- Montana, rules in, 422.
- multiplicity of suits as ground for injunction, 358-361.
- Nebraska, rules in, 423.
- Nevada, rules in, 425.
- New Hampshire, rules in, 426.
- New Jersey, rules in, 427.
- New Mexico, rule in, 428.
- New York, rules in, 429, 430.
- North Carolina, rules in, 432.
- North Dakota, rules in, 434.
- Ohio, rules in, 435.
- Oklahoma, rules in, 437-439.
- Oregon, rules in, 440.
- Pennsylvania, rules in, 442.
- personal property tax not enjoined, 359.
- Rhode Island, rules in, 443.
- South Carolina, rule in, 444.
- South Dakota, rules in, 445.
- tender of valid portion prerequisite to injunction, 357.
- Tennessee, rule in, 447.
- Texas, rules in, 448.
- United States courts enjoining state taxes, 366-378.
 - adequacy of remedy in state courts no bar, 367.
 - grounds of jurisdiction, 368.
 - irreparable injury as ground for injunction, 370.
 - multiplicity of suits, 372.
 - property in federal receiver's hands, 377.
 - special assessments, 378.
 - state tax in violation of contract, 374.
 - valuation on unjust discrimination, 371.
- Utah, rule in, 450.
- Vermont, rule in, 451.
- Virginia, rule in, 453.
- Washington, rules in, 454.
- West Virginia, rules in, 456.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

TAXATION,—Continued.

- Wisconsin, rules in, 458-462.
- Wyoming, rules in, 464.
- irregularity alone insufficient for injunction, 357.
- irreparable injury as ground for injunction, 358.
- multiplicity of suits as ground for injunction, 358-361.
- personal property tax not enjoined, 359.
- receivers, priority of taxes, 219.
- special assessments, injunctions against, 364.
 - Arkansas, general rules, 382.
 - California, general rules, 384.
 - Colorado, general rules, 386.
 - federal courts, injunctions in, 378.
 - Georgia, general rules, 391.
 - Illinois, rules in, 399.
 - Indiana, rules in, 402.
 - Iowa, rules in, 404.
 - Kansas, rules in, 408.
 - Maryland, rule in, 413.
 - Massachusetts, rules in, 414.
 - Michigan, rules in, 416.
 - Minnesota, rules in, 418.
 - Missouri, rules in, 421.
 - Nebraska, rules in, 424.
 - New Jersey, rules in, 427.
 - New York, rules in, 431.
 - North Carolina, rules in, 433.
 - Ohio, rules in, 436.
 - Oklahoma, rule in, 437.
 - Oregon, rules in, 441.
 - South Dakota, rule in, 446.
 - Texas, rule in, 449.
 - United States courts, injunctions in, 378.
 - Vermont, rule in, 452.
 - Washington, rules in, 455.
 - Wisconsin, rules in, 463.
- tender of valid portion prerequisite to injunction, 357.
- United States courts enjoining state taxes, 366-378.
 - adequacy of remedy in state courts no bar, 367.
 - grounds of jurisdiction, 368.

TENANTS IN COMMON,

- accounting, suits between co-tenants, 933.
- partition between. See Partition.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

TENNESSEE,

- injunctions, statutory regulations, 262, note.
- receivership statutes, 73, note.
- statutory vesting title by decree, 13, note.
- taxation, injunctions against, 447.

TEXAS,

- injunctions, statutory regulations, 262, note.
- receivers for corporations, statutes, 127, note.
- receivership statutes, 73, note.
- special assessments, injunctions against, 449.
- taxation, injunctions against, 448.

THINGS IN ACTION,

- specific performance of contracts concerning, 750.

TICKET SCALPERS,

- injunctions against, 634.

TITLE,

- injunctions against trespass, disputed title, 502.
- injunction against trespass, title tried, 506.
- injunction to stay waste, plaintiff's title, 487, 488.
- may pass by decree without jurisdiction of parties in certain cases, 15.
- not vested by decrees of federal courts, 14.
- waste enjoined, what title plaintiff must show, 487, 488.

TOLL BRIDGE,

- franchise protected by injunction, 583, note.

TORTS,

- injunctions, against miscellaneous torts, 629-635.
 - to restrain or prevent, 474-475.
 - to restrain libel, 481.
- libel, injunction to restrain, 481.
- of receivers, priority of claims for, 223.
- prevention by injunction, in general, 474, 475.

TRADE,

- injunctions to prevent interference with freedom of, 585-628.
See Injunctions.

TRADE-MARKS,

- injunctions to protect, 577-580, 582.

TRADE-NAMES,

- injunctions to protect, 580, and note.

TRADE SECRETS,

- injunction to prevent disclosure, 268.

TRADING STAMPS,

- injunctions against unfair use of, 634.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

TRESPASS,

equitable trespass defined, 493.

injunctions against, 493-511.

See Injunctions.

TRUST DEEDS. See Mortgages.**TRUSTS,**

breach of express, continuing trust, laches, 28.

breach of trust as ground for receivership, 89.

breach of trust enjoined, 266.

laches, breach of express continuing trust, 28.

receivership to enforce trusts, 87.

specific enforcement. See Specific Performance.

TURNPIKE,

franchise protected by injunction, 583, note.

U**ULTRA VIRES ACTS OF CORPORATIONS** enjoined, 301-304.**UNFAIR COMPETITION,**

injunctions against unfair competition, 578-579, 582.

UNITED STATES,

laches, imputability to government, 25.

receivership statutes, 73, 173, 174.

UNITED STATES COURTS,

laches, defense of, favored in United States courts, 23.

decrees of federal courts do not transfer title, 14.

decrees of, how enforced, 14.

federal taxes not enjoined, 365.

injunction, federal taxes not enjoined, 365.

injunction to restrain state taxation, 366-378.

adequacy of remedy in state court no bar, 367.

ground of jurisdiction, 368.

See Injunction; Taxation.

injunctions against proceedings of state courts, 640.

patent rights, jurisdiction exclusive, 565.

receivers, rule as to leave of court to sue receiver, 173, 174.

state statutes authorizing vesting title by decree not operative

in United States courts, 14.

USE AND OCCUPATION,

injunction for mere use by trespasser not granted, 504.

USURY,

injunction to relieve mortgagor, 317.

UTAH,

receivership statutes, 73, note.

statutory vesting title by decree, 13, note.

taxation, injunctions against, 450.

Equitable Remedies, Vol. II—113

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

V

VENDOR AND PURCHASER,

equitable estates under contracts to buy and sell land, 838-846.

See Equitable Estates.

specific performance. See Specific Performance.

VENDOR'S LIEN,

receiver appointed to enforce, 111.

VERMONT,

injunctions, statutory regulations, 262, note.

receivership statutes, 73, note.

special assessments, injunctions against, 452.

statutory vesting title by decree, 13, note.

taxation, injunctions against, 451.

VIRGINIA,

injunctions, statutory regulations, 262, note.

receivership statutes, 73, note.

statutory vesting title by decree, 13, note.

taxation, injunctions against, 453.

VOLUNTARY ASSOCIATIONS,

injunctions relating to voluntary associations, 309-315.

W

WASHINGTON,

injunctions, statutory regulations, 262, note.

receivers for corporations, statutes, 127, note.

receiver for unsecured creditors, 112, note.

receivership statutes, 73, note.

special assessments, injunctions against, 455.

taxation, injunctions against, 454.

WASTE,

ameliorating waste not enjoined, 485.

equitable waste defined, 489.

injunctions against, 482-492.

ameliorating waste not enjoined, 485.

completed injury, not enjoined, 484.

equitable waste defined, 489.

equitable waste enjoined, 483.

equitable waste,

extent of jurisdiction, 490.

relief against in equity, 491.

extent of jurisdiction, 483.

injury,

must be threatened, 484.

must it be irreparable? 486.

[Vol. I, §§ 1-542; Vol. II, §§ 543-945.]

WASTE,--Continued.

- legal waste, injunctions against, 483, 485.
 - injunction sole equitable remedy, 491.
- origin of jurisdiction, 482.
- parties who may be enjoined, 492.
- permissive waste not enjoined, 485.
- threatened, waste must be, 484.
- title, what title plaintiff must show, 487, 488.
- legal waste, injunctions against, 483, 485.
- legal waste,
 - injunction sole equitable remedy, 491.
- parties who may be enjoined, 492.
- permissive waste not enjoined, 485.
- title of plaintiff as affecting injunction, 487, 488.
- vendor's or vendee's waste, contract for equitable estate, 857.

WATER RIGHTS,

- protection of water rights by injunction, 561-564.
 - diversion of watercourse enjoined, 562.
 - navigation, obstructions enjoined, 564.
 - obstruction of watercourse enjoined, 562.
 - percolating waters, injunctions relating to, 563.
 - pollution enjoined, 561.

WEST VIRGINIA,

- injunctions, statutory regulations, 262, note.
- receivership statutes, 73, note.
- special assessments, injunctions against, 457.
- statutory vesting title by decree, 13, note.
- taxation, injunctions against, 456.

WILLS,

- suits to construe, classified, 7.

WISCONSIN,

- injunctions, statutory regulations, 262, note.
- receivers for corporations, statutes, 127, note.
- receivership statutes, 73, note.
- special assessments, injunctions against, 463.
- taxation, injunctions against, 458-462.

WYOMING,

- injunctions, statutory regulations, 262, note.
- receivership statutes, 73, note.
- statutory vesting title by decree, 13, note.
- taxation, injunctions against, 464.

SCHOOL OF LAW LIBRARY
UNIVERSITY OF CALIFORNIA
LOS ANGELES

UC SOUTHERN REGIONAL LIBRARY FACILITY



AA 000 850 962 2

